

Page 326	Page 328
1 THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION	1 APPEARANCES (CONT.):
2	2
3 In the Matter of:)	3 On behalf of the Witness:
4) File No. C-08400-A	4 ZACHARY J. ZILIAK, ESQ.
5 CATALYST HEDGED FUTURES)	5 STEVEN BYLINA, ESQ.
6 STRATEGY FUND)	6 Ziliak Law, LLC
7	7 141 West Jackson Boulevard, Suite 4048
8 WITNESS: Edward S. Walczak	8 Chicago, IL 60604
9 PAGES: 326 through 767	9
10 PLACE: Securities and Exchange Commission	10
11 175 West Jackson Boulevard,	11
12 Chicago, Illinois	12
13 DATE: Wednesday, April 4, 2018	13
14	14
15 The above entitled matter came on for hearing,	15
16 pursuant to notice, at 8:31 a.m.	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24 Diversified Reporting Services, Inc.	24
25 (202) 467-9200	25
Page 327	Page 329
1 APPEARANCES:	1 C O N T E N T S
2	2
3 On behalf of the Securities and Exchange Commission:	3 WITNESS: EXAMINATION
4 JASON SCHMIDT, ESQ.	4 Edward S. Walczak 332
5 DAVID BENSON, ESQ.	5
6 TERRY MORAN, SSE	6 SEC EXHIBITS
7 JEFFREY SHANK, ESQ.	7 EXHIBITS: DESCRIPTION IDENTIFIED
8 Securities and Exchange Commission	8 22 E-mail chain 696
9 Division of Enforcement	9 25 Prin. Invest. Strat. 703
10 175 W. Jackson, Suite 1450	10 32 12-9-16 e-mail 529
11 Chicago, IL 60604	11 34 3-15-17 e-mail 414
12	12 39 12-9-16 e-mail 543
13 On behalf of the Commodity Futures Trading	13 40 E-mail 548
14 Commission:	14 44 Risk Report 547
15 SAM WASSERMAN, ESQ.	15 46 12-10-16 e-mail 583
16 MICHAEL CAZAKOFF (via telephone)	16 48 Risk Report 12-12-16 587
17 Commodity Futures Trading Commission	17 49 Risk Report 12-13-16 593
18 140 Broadway	18 50 Risk Report 12-14-16 594
19 New York, NY 10005	19 54 1-30-17 e-mail 599
20	20 66 2-15-17 e-mail 680
21	21 67 Commentary, rough 683
22	22 70 Commentary 685
23	23 79 E-mail 713
24	24 93 10-9-15 e-mail 370
25	25 94 10-20-15 e-mail 377

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1	C O N T E N T S (CONT.)			
2				
3	SEC EXHIBITS			
4	EXHIBITS: DESCRIPTION	IDENTIFIED		
5	116 8-5-16 e-mail	449	1	PROCEEDINGS
6	117 7-22-16 e-mail	446	2	MR. SCHMIDT: So we are back on the
7	126 E-mail	717	3	record 8:31 a.m. on April 4th.
8	142 10-30-14 e-mail	343	4	Whereupon,
9	143 11-16-14 e-mail	367	5	EDWARD S. WALCZAK
10	144 3-16-16 e-mail	392	6	was recalled as a witness and, having previously
11	146 6-29-16 e-mail	444	7	first duly sworn, was examined and testified
12	152 Wayback Machine	492	8	further as follows:
13	153 Presentation	514	9	EXAMINATION
14	154 Slip Sheet	515	10	BY MR. SCHMIDT:
15	155 3-23-16 email	689	11	Q Good morning, Mr. Walczak.
16			12	A Good morning.
17			13	MR. SCHMIDT: Good morning, Counsel.
18			14	MR. ZILIAK: Good morning.
19			15	BY MR. SCHMIDT:
20			16	Q For the record, between the breaks
21			17	that
22			18	we've had and the testimony from yesterday to
23			19	today, you haven't had any substantive
24			20	discussions with staff of the SEC or the CFTC;
25			21	is that correct?
			22	A That's correct.
			23	Q Okay. And I mentioned before we went
			24	on record, you have SEC Exhibit 1, CFTC Exhibit
			25	1, and a copy of the SEC's formal order in front
		Page 331		Page 333
1	C O N T E N T S (CONT.)			
2				
3	CFTC EXHIBITS			
4	EXHIBITS: DESCRIPTION	IDENTIFIED		
5	2 Daily HFXAX Prices	603	1	of you, right?
6	3 Daily S&P Prices	603	2	A Yes, I do.
7	4A E-mail	605	3	Q Okay. Any questions about those
8	4B Attachment	605	4	documents occur to you overnight --
9	5A 1-30-17 e-mail	610	5	A No.
10	5B Spreadsheet	610	6	Q -- you want to ask? Everything all
11	6A 2-9-17 e-mail	612	7	right?
12	6B Confirm	612	8	A Um-hum.
13	7 Trade confirm	613	9	Q Okay. So what I want to start talking
14	8 Catalyst 0050194445	613	10	about this morning is the concept of a soft
15	9 Catalyst 0050197444	613	11	close. Okay? So this is something that was
16	10 Spreadsheet	619	12	discussed at Catalyst at the futures fund; is
17	11A E-mail	620	13	that correct?
18	11B Attachment	621	14	A Yes.
19	12 Exposure summary	664	15	Q Okay.
20			16	MR. WASSERMAN: I'm sorry to
21			17	interrupt, but we forgot to dial in.
22			18	MR. SCHMIDT: Yeah, we did. Can we go
23			19	off the record please?
24			20	(A brief recess was taken.)
25			21	BY MR. SCHMIDT:
			22	Q We are back on the record at 8:33 a.m.
			23	The concept of a soft close.
			24	Okay. So this was something that was
			25	discussed internally at Catalyst and with you at

<p>1 the futures fund, correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. So would you agree that</p> <p>4 Catalyst was in favor of a soft close and you</p> <p>5 were in -- in agreement with that?</p> <p>6 A Yes.</p> <p>7 Q Okay. Do you remember when the first</p> <p>8 discussion about the possibility of a soft close</p> <p>9 occurred?</p> <p>10 A No.</p> <p>11 Q Okay. Let me show you -- before we</p> <p>12 get to that, can you tell me what is the reason</p> <p>13 for a soft close?</p> <p>14 A Typically, the reason would be to</p> <p>15 limit asset inflows, soft close in the context</p> <p>16 of a mutual fund.</p> <p>17 Q Yeah. I'm not asking sort of</p> <p>18 generally the definition of a soft close.</p> <p>19 Why -- is that reason also applicable</p> <p>20 to the futures fund situation, or are you giving</p> <p>21 me a general reason for a soft close?</p> <p>22 A Both.</p> <p>23 Q Okay. So there isn't a difference?</p> <p>24 A No.</p> <p>25 Q Okay. All right. So just to be</p>	<p>Page 334</p> <p>1 A I think so, yes.</p> <p>2 BY MR. BENSON:</p> <p>3 Q If I can, you said that a soft close</p> <p>4 is a tool to limit the addition of assets in the</p> <p>5 futures fund, right?</p> <p>6 A Yes.</p> <p>7 Q And you felt, collectively with</p> <p>8 Catalyst, that a soft close is a good idea</p> <p>9 because you were concerned that there may be a</p> <p>10 point in the future to restrict flows?</p> <p>11 A That there may be a point in the</p> <p>12 future where the fund size would interfere with</p> <p>13 the execution of the strategy.</p> <p>14 We were not at that point yet, but we</p> <p>15 were forward looking to that time.</p> <p>16 Q Okay. So, in other words, what you're</p> <p>17 saying is the soft close was a tool to ensure</p> <p>18 that the strategy could continue to be executed</p> <p>19 as you intended?</p> <p>20 A The soft close was intended to ensure</p> <p>21 that assets in the fund did not become so large</p> <p>22 as to restrict application of the strategy, that</p> <p>23 the soft close itself had no impact whatsoever</p> <p>24 on the strategy -- would not. Simply an asset</p> <p>25 management tool.</p>
<p>Page 335</p> <p>1 clear, my questions are about why a soft close</p> <p>2 would --</p> <p>3 A Okay.</p> <p>4 Q -- make since for the futures fund,</p> <p>5 and your answer is the same?</p> <p>6 A It is.</p> <p>7 Q Okay. Can you repeat it again just to</p> <p>8 make sure I understand?</p> <p>9 A Sure. A soft close is a tool that can</p> <p>10 be used to limit the inflows of assets to the</p> <p>11 futures fund.</p> <p>12 Q And why was that a good idea for the</p> <p>13 futures fund?</p> <p>14 A At the time of our discussions, we</p> <p>15 felt as though there may be a point at some</p> <p>16 point in the future that we needed to restrict</p> <p>17 flows and that in order to get in front of that</p> <p>18 point and not have to do it in a way that might</p> <p>19 be detrimental to shareholders that we should</p> <p>20 consider doing it --</p> <p>21 MR. CAZAKOFF: Good morning. This is</p> <p>22 Mike in New York.</p> <p>23 MR. SCHMIDT: Good morning, Mike.</p> <p>24 BY MR. SCHMIDT:</p> <p>25 Q Did you finish your answer?</p>	<p>Page 337</p> <p>1 Q Well, it would have an impact on the</p> <p>2 strategy in that it would allow you to continue</p> <p>3 to execute the strategy because, but for the</p> <p>4 soft close, the -- the assets would accumulate</p> <p>5 to such a size that it would be impossible for</p> <p>6 you to execute the strategy as you intended,</p> <p>7 right?</p> <p>8 A Again --</p> <p>9 MR. ZILIAK: That's not -- I'm sorry.</p> <p>10 You're not representing his testimony --</p> <p>11 MR. BENSON: I'm asking him a</p> <p>12 question.</p> <p>13 MR. ZILIAK: All right.</p> <p>14 THE WITNESS: The asset level is what</p> <p>15 we are concerned about.</p> <p>16 The effectiveness or -- the</p> <p>17 effectiveness of the soft close, uncertain.</p> <p>18 It was a tool we were going to use</p> <p>19 to -- for just that reason, so that we</p> <p>20 understood what tools were available to us to</p> <p>21 restrict the growth of assets should we need to</p> <p>22 at some point.</p> <p>23 BY MR. BENSON:</p> <p>24 Q Okay. So let me just cut straight to</p> <p>25 the chase here.</p>

<p style="text-align: right;">Page 338</p> <p>1 The purpose of the soft close, or even 2 the discussion of the soft close, was that you 3 were concerned, as was Catalyst, that there 4 would be a point in time when the fund had 5 accumulated so many assets that it became 6 impossible or extremely difficult for you to 7 execute the strategy in the same manner with the 8 same success that you had historically?</p> <p>9 A That's correct.</p> <p>10 MR. BENSON: Thank you.</p> <p>11 BY MR. MORAN:</p> <p>12 Q Mr. Walczak, can I ask what metric 13 were you using? Were you looking at open 14 interest percentage of volume in the S&P pit?</p> <p>15 A I'm not sure what --</p> <p>16 Q To kind of gauge whether or not you 17 were -- the assets were too large to execute 18 your strategy?</p> <p>19 A So we -- we looked at a variety of 20 factors. We looked at what was our collateral 21 availability at our FMC partners relative to our 22 typical collateral usage, in fact, our maximum 23 collateral usage.</p> <p>24 We looked at volume percent of the 25 exchange, exchange volume, over periods of time.</p>	<p style="text-align: right;">Page 340</p> <p>1 equally weighted between calls and puts, right?</p> <p>2 A That's correct.</p> <p>3 Q Okay. So does it make sense to 4 compare the total volume of contracts in the pit 5 or just the total volumes of, say, your calls 6 versus the call volume in the pit?</p> <p>7 A We used total volume, I believe. I 8 would have to check the calculation. At the 9 time what we used made sense to us.</p> <p>10 Q Okay. Sitting here today, does it 11 make more sense to compare total -- your total 12 calls to the call volume as opposed to, if you 13 are doing almost exclusively calls at a certain 14 point in time, comparing it to the total volume 15 in the pit?</p> <p>16 A Nothing has changed about my 17 perception -- you asked sitting here today. 18 Nothing has changed about my perception of what 19 the right number is to look at.</p> <p>20 I think that gave us a fair 21 representation of our -- our share of exchange 22 volume.</p> <p>23 BY MR. BENSON:</p> <p>24 Q It would have been possible for you, 25 though, to look at your percentage of the market</p>
<p style="text-align: right;">Page 339</p> <p>1 Q What was -- approximately what were 2 your -- what was Catalyst's percentage of the 3 volume?</p> <p>4 A It varied significantly. I don't 5 recall exact numbers, but it varied 6 significantly.</p> <p>7 Probably somewhere between 10 and 30.</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q I'm sorry. Volume of what?</p> <p>10 A The percentage of the futures fund 11 volume as a percentage of contracts traded on 12 the exchange that we traded CME.</p> <p>13 Q Total contracts traded?</p> <p>14 A I believe that's the metric.</p> <p>15 Q But isn't your strategy you look at 16 the market and -- in general, not exclusively, 17 but in general you're either doing the call 18 strategy or the put strategy, right? Depending 19 on where volatility is and where you think 20 it's -- where the sweet spot in the curve is, 21 right?</p> <p>22 A Well, depending on where volatility 23 is, that's what drives the calls versus puts, 24 yes.</p> <p>25 Q Okay. So most of the time, you're not</p>	<p style="text-align: right;">Page 341</p> <p>1 overall, as you did, right?</p> <p>2 A Yes.</p> <p>3 Q And it also would have been possible 4 for you to look at your trading as a percentage 5 of the call contracts, right?</p> <p>6 A Yes.</p> <p>7 Q And it also would have been possible 8 for you to look at your volume as a percentage 9 of the put contracts, right?</p> <p>10 A Yes.</p> <p>11 Q And did you ever break down your 12 volume to look at it beyond just the total 13 market?</p> <p>14 A I think we may have. I don't recall 15 exactly. I recall we did total numbers.</p> <p>16 Q Okay.</p> <p>17 A And -- and in further answer to your 18 previous question, the -- my understanding of 19 exchange functions -- and, again, I may be 20 incorrect in this, but my understanding of 21 exchange functions and liquidity providers, puts 22 and calls have delta exposure and Greek exposure 23 from the market makers' point of view. So that 24 it, in my mind, makes more sense to look at 25 total volume than a particular call versus put</p>

<p>1 type of volume.</p> <p>2 Again, I could be mistaken, but that</p> <p>3 was our -- one of my biases as we looked at</p> <p>4 volume.</p> <p>5 BY MR. SCHMIDT:</p> <p>6 Q Yeah. I guess I -- I don't follow</p> <p>7 that exactly.</p> <p>8 I -- my thinking, when Terry asked the</p> <p>9 question, was what you were looking at to assess</p> <p>10 potential capacity risk and size concerns to the</p> <p>11 futures fund, not what a market maker would be</p> <p>12 looking at.</p> <p>13 So I guess I don't follow how -- how a</p> <p>14 market maker might measure delta exposure of</p> <p>15 contracts in the pit would be relevant to the</p> <p>16 size of a particular fund that you managed.</p> <p>17 A So the typical counterparties to our</p> <p>18 trades are market-making firms.</p> <p>19 Q Okay.</p> <p>20 A And, again, my understanding of how a</p> <p>21 market maker provides liquidity on the exchange</p> <p>22 is by managing his delta exposure to his</p> <p>23 inventory to open contracts, put, call.</p> <p>24 He's going to hedge that -- that</p> <p>25 volume somewhere.</p>	<p>Page 342</p> <p>1 A Correct.</p> <p>2 Q And you're setting up -- you're</p> <p>3 basically setting an agenda for a call you're</p> <p>4 going to have with him?</p> <p>5 A Yes.</p> <p>6 Q All right. And this is approximately</p> <p>7 a year into after the creation of the futures</p> <p>8 fund?</p> <p>9 A Yes.</p> <p>10 Q Okay. And one of the things you want</p> <p>11 to talk to him about is -- it says HFXAX.</p> <p>12 That's the futures fund, right?</p> <p>13 A Correct.</p> <p>14 Q Okay. So the futures fund capacity</p> <p>15 and close options?</p> <p>16 A Yes.</p> <p>17 Q Right? Okay.</p> <p>18 Did you talk to him about that?</p> <p>19 A I don't recall. It's, I'll be honest,</p> <p>20 very likely we followed this agenda. I don't</p> <p>21 recall a specific discussion.</p> <p>22 Q So in October of 2014, capacity was</p> <p>23 already a concern for you as a portfolio manager</p> <p>24 as the futures fund?</p> <p>25 A Yes, it was.</p>
<p>Page 343</p> <p>1 So I am just explaining. Again, I may</p> <p>2 be mistaken. That is the point of view that I</p> <p>3 maintained when -- when I chose to look at total</p> <p>4 option volume.</p> <p>5 Q To be clear, I am not at all saying</p> <p>6 you're mistaken. I'm just trying to understand.</p> <p>7 A Sure. And that's the point of my</p> <p>8 answer as well.</p> <p>9 Q Okay. I get it. Thank you.</p> <p>10 MR. SCHMIDT: Terry, do you have</p> <p>11 anything else?</p> <p>12 MR. MORAN: No. Thank you.</p> <p>13 BY MR. SCHMIDT:</p> <p>14 Q Let me show you what's been marked as</p> <p>15 Exhibit 142.</p> <p>16 (SEC Exhibit No. 142 was</p> <p>17 marked for identification.)</p> <p>18 MR. SCHMIDT:</p> <p>19 Q So, for the record, this is an e-mail</p> <p>20 dated October 30, 2014.</p> <p>21 Do you recognize this document?</p> <p>22 A Yes, I do.</p> <p>23 Q This is an e-mail you sent to Mr.</p> <p>24 Szilagyi, S-z-i-l-a-g-y-i, October 30, 2014,</p> <p>25 correct?</p>	<p>Page 345</p> <p>1 Q And you raised it with Catalyst?</p> <p>2 A I did.</p> <p>3 Q What did you say?</p> <p>4 A You'll notice the previous agenda I</p> <p>5 related to a new FCM account. And I do recall</p> <p>6 in that time frame our asset level was not a</p> <p>7 concern.</p> <p>8 What was a concern to me was our</p> <p>9 ability to expand our series of relationships</p> <p>10 with FCM partners in order that we had</p> <p>11 sufficient collateral capability to continue to</p> <p>12 trade the fund.</p> <p>13 That's why that other agenda item is</p> <p>14 on the same -- in fact, they were adjacent to</p> <p>15 each other on my list. That was my concern.</p> <p>16 Q So, for the record, the agenda item</p> <p>17 you're talking about says, KCG, comma, new FCM</p> <p>18 account?</p> <p>19 A Correct.</p> <p>20 Q Right? Okay.</p> <p>21 And you explained yesterday that FCM</p> <p>22 is futures commission merchant?</p> <p>23 A Correct.</p> <p>24 Q Okay. And I think what you're saying</p> <p>25 is that the way that's related to capacity is</p>

<p style="text-align: right;">Page 346</p> <p>1 that, if you can't enter into relationships with 2 new FCMs or get current FCMs to increase the 3 amount of margin they are going to give you, 4 that could cause a constraint on your ability to 5 execute the strategy?</p> <p>6 A That's correct.</p> <p>7 Q Okay. And that was a concern back in 8 October of 2014?</p> <p>9 A Correct.</p> <p>10 Q And so if -- if you couldn't establish 11 these new FCM relationships or could not 12 convince them to increase the margin available 13 to the futures fund, that was a risk of being 14 able to properly execute the strategy from that 15 point forward?</p> <p>16 A That's correct.</p> <p>17 Q Okay. So did you talk about that risk 18 to Mr. Szilagyi at Catalyst?</p> <p>19 A I believe I did. As I said, I don't 20 remember the specific discussion, but I do 21 remember from these agenda items the general 22 nature.</p> <p>23 Q Okay. And what was Mr. Szilagyi's 24 response to this capacity issue FCM risk that 25 you discussed with him?</p>	<p style="text-align: right;">Page 348</p> <p>1 Q Okay.</p> <p>2 MR. WASSERMAN: I just have quick 3 questions on that, if that's okay.</p> <p>4 MR. SCHMIDT: Yep.</p> <p>5 BY MR. WASSERMAN:</p> <p>6 Q On the line that reads, HFXAX 7 capacity, comma, close options, am I reading 8 that right? Is it close option or close 9 options?</p> <p>10 A Close options.</p> <p>11 Q What does that mean?</p> <p>12 A I think it means that I intended and 13 probably did discuss: All right, if we run into 14 a constraint, what can we do?</p> <p>15 Again, I am still relatively at this 16 point unfamiliar with '40 Act vehicles.</p> <p>17 And so my discussion was: I'm 18 concerned about FCM capacity; if it becomes a 19 problem, what can we do about that?</p> <p>20 Q Excuse me. So when you say close 21 options, you're referring to cutting off inflows 22 to the fund?</p> <p>23 A That's correct.</p> <p>24 Q In May 2014, do you recall how big 25 the -- how -- excuse me.</p>
<p style="text-align: right;">Page 347</p> <p>1 A I don't recall specifically in this 2 discussion.</p> <p>3 I do recall he was -- he was open to 4 discussing and understanding the constraint.</p> <p>5 Q Did he ever say: I don't believe you; 6 like, I don't think this is a problem; forget 7 about it?</p> <p>8 A I don't recall that, no.</p> <p>9 Q Okay. And, in fact, this was a -- 10 this is an issue that didn't go away, right?</p> <p>11 The capacity issue was something that 12 you continued to look at, continued to discuss 13 with Mr. Szilagyi for years?</p> <p>14 A Yes. Not frequently. But you're 15 correct that the discussions continued.</p> <p>16 Q Okay. And in those discussions, he 17 never said: Why are we still talking about 18 this? I told you it's not a problem?</p> <p>19 A No, he did not.</p> <p>20 Q Okay. Do you remember what the 21 outcome is of this call?</p> <p>22 A I don't.</p> <p>23 Q And this is before Ms. Rios has joined 24 you, correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 349</p> <p>1 Do you recall what the AUM of the fund 2 was?</p> <p>3 A No, I don't.</p> <p>4 Q Do you recall how much money you made 5 in 2014?</p> <p>6 A No, I don't.</p> <p>7 Q Can you me a ballpark how much money 8 you made in 2014?</p> <p>9 A Not really. It was small.</p> <p>10 Q You make -- under the terms of your 11 contract, you make approximately \$8 million per 12 billion dollars of AUM, right?</p> <p>13 A Yes. That's correct.</p> <p>14 Q Did you make --</p> <p>15 A Gross.</p> <p>16 Q Did you make under \$8 million or over 17 \$8 million in 2014?</p> <p>18 A Under 8 million.</p> <p>19 Q So the fund was probably under a 20 billion dollars in -- at the end of 2014?</p> <p>21 A Well -- and, again, the reason for my 22 response is that selling commissions in the 23 first year or two of the fund were significant.</p> <p>24 They were greater than my portion of 25 the advisory fees for some period of time.</p>

<p style="text-align: right;">Page 350</p> <p>1 Q I'm sorry. I don't follow what the 2 relationship is because selling commissions and 3 your advisory fee.</p> <p>4 A Catalyst and I split advisory fees. 5 We also split sales commissions.</p> <p>6 MR. SCHMIDT: Meaning you split the 7 obligation to pay the sales commissions?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. SCHMIDT: Okay.</p> <p>10 MR. WASSERMAN:</p> <p>11 Q I see.</p> <p>12 You're saying that sales 13 commissions -- 50 percent of sales commissions 14 paid the wholesalers came out of your cut of the 15 advisory fee?</p> <p>16 A Correct.</p> <p>17 Q Has that always been the case?</p> <p>18 A Yes.</p> <p>19 Q What -- what are those commissions 20 generally, or what did those commissions 21 generally amount to 2014?</p> <p>22 A You mean -- aggregate amount, I don't 23 know.</p> <p>24 I believe the payout is something like 25 40 or 50 basis points.</p>	<p style="text-align: right;">Page 352</p> <p>1 that caused you concern about the fund's ability 2 to execute its strategy?</p> <p>3 A No.</p> <p>4 BY MR. SCHMIDT:</p> <p>5 Q The line that says, "Close options," I 6 assume one of the options is a soft close, which 7 you've described?</p> <p>8 A Yes.</p> <p>9 Q What are other close options?</p> <p>10 A Not my area of expertise. There's one 11 other that I know of. I guess I've heard it 12 described as a hard close.</p> <p>13 Q Can you tell us what your 14 understanding of a hard close is?</p> <p>15 A My understanding of a hard close would 16 be to simply refuse all new investment to the 17 fund.</p> <p>18 Q The more extreme version of a soft 19 close?</p> <p>20 A Yes.</p> <p>21 Q Okay. Do you know if you ever 22 discussed the concept of a hard close with Mr. 23 Szilagyi or anybody else at Catalyst?</p> <p>24 A I -- I believe I did.</p> <p>25 Q Okay. Do you know, in the context of</p>
<p style="text-align: right;">Page 351</p> <p>1 Q Is it hundreds of thousands of dollars 2 that come out of your cut or millions of 3 dollars?</p> <p>4 A Well, it depends on how -- the time 5 frame.</p> <p>6 Q In 2014.</p> <p>7 A In 2014 it was millions of dollars.</p> <p>8 Q In 2014 millions of dollars came out 9 of your cut of the advisory fee to pay 10 wholesalers?</p> <p>11 A That's the best of my recollection, 12 yes.</p> <p>13 Q And, obviously, the AUM of the fund is 14 documented from its inception --</p> <p>15 A Sure.</p> <p>16 Q -- to today. I'm just trying to 17 establish your recollection --</p> <p>18 A Right.</p> <p>19 Q -- on the basis of this document.</p> <p>20 To the best of your recollection, was 21 the AUM of the fund under a billion dollars at 22 the time Exhibit 142 was written?</p> <p>23 A I don't know.</p> <p>24 Q Do you recall in October of 2014 there 25 being any other factors besides FCM capacity</p>	<p style="text-align: right;">Page 353</p> <p>1 this discussion that's referenced in this e-mail 2 where you talked about close options, plural -- 3 or at least it was on the agenda -- do you know 4 whether a hard close was discussed at that 5 point?</p> <p>6 A I don't believe so.</p> <p>7 Q Okay. Not as even an option?</p> <p>8 A I can't say for sure the specifics of 9 the -- that discussion.</p> <p>10 The reason I say I don't believe so is 11 I -- I am comfortable that at that time it was 12 very much a forward-looking discussion and not 13 something that was urgent and might require a 14 hard close.</p> <p>15 Q The concept of a hard close wasn't 16 urgent at that point?</p> <p>17 A That's correct.</p> <p>18 In other words, the capacity issue was 19 not so urgent as to seriously discuss a hard 20 close. It was simply forward planning.</p> <p>21 Q Got it.</p> <p>22 BY MR. SHANK:</p> <p>23 Q So when did the concept of hard close 24 come up?</p> <p>25 A At some point later. I can't say</p>

<p style="text-align: right;">Page 354</p> <p>1 exactly when, but as I testified previously, we 2 had ongoing discussions. Not frequent, but 3 ongoing.</p> <p>4 And when I say "not frequent," not 5 daily or weekly or even monthly. But, generally 6 speaking, ongoing we would discuss from time to 7 time.</p> <p>8 So at some point in those discussions, 9 certainly a hard close was mentioned, but I 10 can't specify exactly when.</p> <p>11 Q Would it have been before 2017?</p> <p>12 A I'm not sure.</p> <p>13 Q Would it have been before the losses that 14 were suffered in February of 2017?</p> <p>15 A Probably.</p> <p>16 Q Can you describe discussions you had 17 surrounding a hard close?</p> <p>18 A I don't remember any detailed 19 discussions other than it was a -- an available 20 option for us or alternative for us to use.</p> <p>21 Q Who were you having these discussions 22 with?</p> <p>23 A Mr. Szilagyi.</p> <p>24 Q Was it ever seriously contemplated 25 doing a hard close?</p>	<p style="text-align: right;">Page 356</p> <p>1 routine -- I don't recall the exact frequency -- 2 what I would call capacity analyses that looked 3 at volume numbers, FCM capacity.</p> <p>4 I don't recall if there's anything 5 else that we looked at in there.</p> <p>6 There were some subjective factors 7 that we discussed from time to time.</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q Did that capacity analyses -- or I 10 guess we'll take one. A capacity analysis, did 11 it result in any sort of written work product?</p> <p>12 A Yes.</p> <p>13 Q What does that look like?</p> <p>14 A It was a -- I think a -- in some cases 15 a presentation deck kind of thing.</p> <p>16 Q Okay.</p> <p>17 A And we also -- we did do regular 18 volume reporting in terms of our percentage of 19 exchange volume, but we didn't always use that 20 to discuss. We simply tracked it.</p> <p>21 Q Okay. So there were more formal, I 22 guess, slide deck presentations about capacity 23 analysis?</p> <p>24 A Yes.</p> <p>25 Q And then there were also volume</p>
<p style="text-align: right;">Page 355</p> <p>1 A It was at one point. I think we had 2 identified an asset level that we felt we should 3 close the fund. I don't recall exactly what 4 that was, but I think there were discussions 5 certainly.</p> <p>6 Q Can you approximate where that asset 7 level was?</p> <p>8 A I don't -- I really don't recall 9 because we discussed -- in our discussions, many 10 levels were discussed at different types. So I 11 can't really pinpoint.</p> <p>12 I do recall that we -- we talked about 13 different levels, and I believe we specified 14 one, but I don't recall exactly what it was.</p> <p>15 Q What different levels did you discuss?</p> <p>16 A I don't -- I just remember discussing 17 different levels.</p> <p>18 Q Was it in the billions?</p> <p>19 A Yes. Yes.</p> <p>20 Q Less than five billion?</p> <p>21 A I don't remember.</p> <p>22 Q And what, if anything, did you do to 23 approximate what an appropriate level was for a 24 hard close?</p> <p>25 A We -- we did, again, regular,</p>	<p style="text-align: right;">Page 357</p> <p>1 reports?</p> <p>2 A We simply reported on -- I mean, 3 again, Ms. Rios got numbers from the exchange 4 and did some basic calculations about how big 5 our volume was, and I'm pretty sure we reported 6 that on a monthly basis.</p> <p>7 Q Did you say recorded or reported?</p> <p>8 A Both.</p> <p>9 Q Where did you record it?</p> <p>10 A Well, all right. I think we have it 11 recorded somewhere.</p> <p>12 Q It's like a spreadsheet on a shared 13 drive? What are you talking about?</p> <p>14 A If it's somewhere, that's where it is.</p> <p>15 Q Okay. So you have a shared drive in 16 Wisconsin at your Wisconsin office?</p> <p>17 A Right.</p> <p>18 Q And do you have, like, a folder for 19 capacity or volume, or where would this be 20 saved?</p> <p>21 A Again, I -- as I sit here today, I 22 don't know for sure.</p> <p>23 Q Okay. How did it get sent to you? 24 Did you get an e-mail with a summary?</p> <p>25 A Typically I get an e-mail.</p>

<p>1 Q All right. This is one of those 2 things where -- just let me finish the question, 3 just to be easy on the court reporter.</p> <p>4 A Sure. Sorry.</p> <p>5 Q So like an e-mail with a summary with 6 or without a spreadsheet attached, is what I'm 7 looking for.</p> <p>8 A I can't remember. I don't -- I don't 9 specifically remember a spreadsheet being 10 attached. That's why we have a shared drive.</p> <p>11 We typically don't lob spreadsheets 12 all over the place on e-mails within the office.</p> <p>13 But typically it would be -- I do 14 recall getting an e-mail specifying the volume.</p> <p>15 Q Okay. So other than the volume 16 reports that you received, at least, via e-mail 17 and the capacity analysis slide decks, where 18 else would these capacity analyses or 19 discussions be recorded in writing?</p> <p>20 That was the original question, where 21 is it in writing.</p> <p>22 So you've given me two spots.</p> <p>23 Anywhere else?</p> <p>24 A Sure. Not that I'm aware of.</p> <p>25 Q Okay. And how many of the slide decks</p>	<p>Page 358</p> <p>1 folders, if any, the others have access to.</p> <p>2 Q What's -- what's -- what's the name of 3 the folder?</p> <p>4 A Again, I just don't remember.</p> <p>5 I'm actually speculating that it's 6 even in there somewhere, but I suspect it is.</p> <p>7 MR. SCHMIDT: Do you want the name of 8 the folder or the shared drive?</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q I'm sorry. The name of the drive, the 11 shared drive.</p> <p>12 A Is SugarSync.</p> <p>13 Q I'm sorry?</p> <p>14 A SugarSync. That is the software 15 company that operates the -- the shared drive 16 cloud backup service.</p> <p>17 Q So is this an icon on your desktop 18 that you just double click and it opens up the 19 shared drive?</p> <p>20 A Yes. Actually, the -- file folders 21 are shared -- yeah.</p> <p>22 All I know is I go to my documents, 23 and it's in there. Certain folders are 24 shared --</p> <p>25 Q What's in there?</p>
<p>1 do you remember?</p> <p>2 A More than one.</p> <p>3 Q Okay. Good. More than ten?</p> <p>4 A No.</p> <p>5 Q More than five?</p> <p>6 A I'm not sure.</p> <p>7 Q Okay.</p> <p>8 BY MR. WASSERMAN:</p> <p>9 Q This shared drive that you're 10 referring to, is that a drive that's accessible 11 from New York?</p> <p>12 A No. It can be, but, to my knowledge, 13 at this point it's not.</p> <p>14 Q So your office in Wisconsin is you, 15 Ms. Rios, Mr. Saffrin. Anyone else?</p> <p>16 A We use August Ewald as kind of a 17 backup to Daniel.</p> <p>18 Q And everyone has their own computer?</p> <p>19 A Yes.</p> <p>20 Q So on -- everyone can access that same 21 shared folder that you're referring to?</p> <p>22 A Well, not everyone.</p> <p>23 I control access to it, and I know 24 that Ms. Rios has access to the folder.</p> <p>25 I don't recall which folder or</p>	<p>Page 359</p> <p>1 A Folders that I need to look at, some 2 of which are shared, some of which are unique to 3 my computer.</p> <p>4 Q What are those folders?</p> <p>5 A I don't recall the specifics.</p> <p>6 Q This is -- this is your office. 7 This -- you go in there every day, right?</p> <p>8 A That's correct.</p> <p>9 Q And you sit at this computer every 10 day, right?</p> <p>11 A Yes. I mean, sure. Every day. All 12 right. Go ahead.</p> <p>13 Q When you work -- you work remotely 14 sometimes, right?</p> <p>15 A Yes.</p> <p>16 Q Do you have access to the same folders 17 when you work remotely?</p> <p>18 A Yes.</p> <p>19 Q So you do this almost every day?</p> <p>20 A Yes.</p> <p>21 Q You access these -- this folder 22 almost -- this shared drive almost every day, 23 right?</p> <p>24 A Right.</p> <p>25 Q What folders are in that shared drive?</p>

<p>1 A A lot of folders. I honestly don't 2 remember. I mean -- 3 Q You don't remember any of them? 4 A What's that? 5 Q You don't remember any of them? 6 A There's a folder called "Catalyst" in 7 there, yes. 8 Q Okay. That is a good start. 9 A Okay. 10 Q There is a folder called "Catalyst"? 11 A Yes. 12 Q Do you remember the names of any other 13 folders? 14 A I have a folder called "personal 15 documents." I have a folder for each of my 16 children. 17 Q Okay. So is everything Catalyst 18 related in the Catalyst folder? 19 A To the best of my knowledge, yes. 20 Q If you double click on that Catalyst 21 folder, what do you see? 22 A I see subfolders. 23 Q What are the subfolders? 24 A There's at least a folder for 25 commodity fund and for futures fund, and I'm not</p>	<p style="text-align: right;">Page 362</p> <p>1 Catalyst, the futures fund, or the commodity 2 fund, we'd like to know -- 3 MR. ZILIAK: Um-hum. 4 MR. SCHMIDT: -- what's in those 5 folders as well please. 6 MR. ZILIAK: Makes sense. 7 MR. SCHMIDT: Okay. Thank you. 8 BY MR. WASSERMAN: 9 Q One -- I'm sorry. One further 10 follow-up question. 11 Has a preservation request in 12 connection with this investigation been relayed 13 to you? 14 A Yes. 15 Q When was that relayed to you? 16 A I don't recall. Early on. 17 Q About a year ago, to the best of your 18 recollection? 19 A I think so. Sure. I think so. 20 BY MR. SCHMIDT: 21 Q Before you got that request, did you 22 delete any documents regarding Catalyst, the 23 futures fund, or the commodity fund 24 intentionally? 25 A I delete documents from time to time.</p>
<p>1 sure what else is in there. 2 Q Okay. Is everything related to the 3 futures fund in that futures fund folder? 4 A I'm not sure. I am not a particularly 5 good recordkeeper or administrator. 6 Q Okay. If you double click on that 7 futures fund folder, what's in there? 8 A I don't -- I don't remember if there's 9 subfolders or just documents in there. 10 Q Okay. In that level of the -- of the 11 drive where there's the futures fund folder and 12 the commodity fund folder, are there any other 13 folders that you can recall? 14 A There are other folders, but I don't 15 remember how they're -- what they are named. 16 MR. SCHMIDT: Can we get a directory 17 of the folders that are in there? 18 MR. ZILIAK: Sure. 19 MR. SCHMIDT: Obviously, we are not 20 interested in your personal folders, but to the 21 extent -- we'd like to know what's in the 22 Catalyst folder, the commodity subfolder and the 23 futures fund subfolder. 24 If there are other subfolders 25 elsewhere on the shared drive that relate to</p>	<p style="text-align: right;">Page 363</p> <p>1 I don't recall specifically deleting 2 or not deleting, but that's a routine part of 3 what I do prior to receiving that order. 4 Q Did you ever do any deletion that was 5 not routine prior to getting the preservation 6 order? 7 A I don't recall doing that, no. 8 Q You said that currently nobody at 9 Catalyst New York or nobody at Catalyst has 10 access to the shared drive. So I just need to 11 follow up. 12 Did they at any time -- people in New 13 York or associated with Catalyst -- have access 14 to your shared drive? 15 A No, I don't -- not that I recall, no. 16 Q Okay. Who would know that for sure? 17 A I don't know if anyone would know for 18 sure. 19 I'm the one that controls access, and 20 I simply don't recall if, for any reason, I may 21 have given someone access temporarily or -- 22 Q Not Mr. Glass? Not Mr. Szilagyi? 23 A Again, I don't recall if, for some 24 reason, to transmit a document more efficiently 25 that I gave them access for a short time.</p>

<p>1 I don't believe so. But, again, my 2 memory is not complete on that. 3 Q So for purposes of this -- I'm sorry. 4 It's called SugarSync? 5 A Yes. 6 Q Is that one word? 7 A Yes. 8 Q Just how it sounds, S-y-n-c? 9 A Yes. 10 Q Okay. Are you the administrator of 11 the shared drive? 12 A I don't know that I have a title 13 connected with the shared drive. I bought the 14 software, and I use it. 15 Q Well, generally, with a software 16 program, the person that controls access is 17 deemed the administrator. 18 I'm not looking for a formal title, 19 but like in the terms of software programs, 20 that's what it's called. 21 A Okay. 22 Q Do you know if you have administrator 23 privileges for that program? 24 A For certain folders that I control. 25 I -- I'm not certain if any of the others in the</p>	<p>Page 366</p> <p>1 ring a bell? 2 A Yeah. I still don't remember who he 3 is, but that name somehow sounds familiar. 4 Q Okay. It looks to me like this e-mail 5 is after your conversation with Mr. Szilagyi 6 that was referenced in the e-mail seven days 7 earlier. Is that fair? 8 A Sure. 9 Q Okay. If you read through this, does 10 this refresh your recollection or give you any 11 insight into what was discussed with Mr. 12 Szilagyi regarding capacity issues and any 13 outcomes that may have come from those 14 discussions? 15 A No. It looks like I talked about soft 16 close at a billion, which I didn't recall 17 earlier, but clearly I wrote it here. So that 18 must be our discussion. 19 Q So in the fall of 2014, the capacity 20 discussions, the status was you were discussing 21 with Mr. Szilagyi a soft close at a billion 22 dollars? 23 A Yes. 24 Q Okay. And do you have any doubt that, 25 when you say, "My discussions with Catalyst,"</p>
<p>1 group of people we talked about have downloaded 2 their own copy of SugarSync and thereby control 3 files. 4 Q Okay. All right. I'm going to show 5 you what's been marked as Exhibit 143. 6 (SEC Exhibit No. 143 was 7 marked for identification.) 8 BY MR. SCHMIDT: 9 Q For the record, this is an e-mail 10 dated November 6th, 2014. Could you take a 11 minute, let me know if you recognize this 12 document. 13 A It looks like an e-mail from me to -- 14 I'm not sure who, but it's an e-mail from me. 15 Q Okay. So, for the record, it's -- 16 it's an e-mail address hoopss4@aol.com, right? 17 A Yes. 18 Q And looking through the e-mails, it 19 look like that person might have the first name 20 Jeff, right? 21 A Yes. 22 Q You can't imagine who Jeff might have 23 been in November of 2014 that you were 24 e-mailing? 25 Oh, it's Jeff Berkowitz. Does that</p>	<p>Page 367</p> <p>1 refers to a discussion with Mr. Szilagyi? 2 A No. That's what it would refer to. 3 Q Okay. So -- and it also looks like if 4 we -- if we go down to your e-mail of July 30th, 5 which is at the bottom of the first page, it 6 looks like, at that point, we could guess AUM is 7 not up to half a billion yet, right? 8 A Correct. 9 Q Okay. So at some point in the fall of 10 2014, you're some point between half a billion 11 and a billion dollars? Is that a fair 12 assumption? 13 A Yes. 14 Q Okay. Was there a soft close at a 15 billion dollars? 16 A I recall that Catalyst attempted a 17 soft close at some point in time, but I honestly 18 don't remember when or what assets that was 19 done. 20 Q Okay. So we'll -- we'll get to that. 21 I think there was a soft close 22 attempted in the fall of 2015. Does that sound 23 right? 24 A I don't recall. 25 Q Okay. All right. Do you remember any</p>

<p>1 attempt at soft close in 2014?</p> <p>2 A Again, I -- I don't believe it was</p> <p>3 that early when Catalyst did a soft close, but I</p> <p>4 don't recall the exact date.</p> <p>5 Q Okay.</p> <p>6 (SEC Exhibit No. 93 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q I show you what's been marked as SEC</p> <p>10 Exhibit 93.</p> <p>11 So, for the record, this is an e-mail</p> <p>12 dated October 9, 2015. The subject is Catalyst</p> <p>13 funds to soft close -- this is in all caps --</p> <p>14 HFXAX, comma, launches additional alternative</p> <p>15 mutual funds Catalyst -- I'm sorry. Then it</p> <p>16 just repeats. So that was the end. "Mutual</p> <p>17 funds." Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q Okay. So now we're a year later,</p> <p>20 right, after your first -- or at least the</p> <p>21 October 2014 soft close discussions with Mr.</p> <p>22 Szilagyi?</p> <p>23 A Yes.</p> <p>24 Q Okay. And do you recognize this</p> <p>25 announcement?</p>	<p>Page 370</p> <p>1 futures fund?</p> <p>2 A We did discuss that, yes. I think it</p> <p>3 was.</p> <p>4 Q Okay. So when you say, "We," it's Ed</p> <p>5 Walczak and Mr. Szilagyi?</p> <p>6 A That's correct.</p> <p>7 Q Anybody else?</p> <p>8 A I don't remember if anyone else is in</p> <p>9 on -- we had more than one conversation. So I</p> <p>10 don't recall if others were involved in the</p> <p>11 conversation.</p> <p>12 I do recall that Mr. Szilagyi and I</p> <p>13 were involved.</p> <p>14 Q You guys were definitely involved.</p> <p>15 Other people may have been?</p> <p>16 A Correct.</p> <p>17 Q Okay. And did -- you do remember when</p> <p>18 Catalyst attempted to soft close the futures</p> <p>19 fund?</p> <p>20 A I remember that happening, yes.</p> <p>21 Q Right. You remember -- you may not</p> <p>22 remember the exact date, but you remember that</p> <p>23 incident?</p> <p>24 A Yes.</p> <p>25 Q Okay. Were the discussions with Mr.</p>
<p>1 A I don't. I am not sure that I was</p> <p>2 copied on this. I'm not generally.</p> <p>3 Q Do you know which alternative mutual</p> <p>4 fund was launched in the fall of 2015?</p> <p>5 A We launched the commodity fund in the</p> <p>6 fall of 2015. I'm not sure if that's the one</p> <p>7 they are referring to.</p> <p>8 Q Okay. Well, let's talk about that.</p> <p>9 Was any part of the decision to launch</p> <p>10 the commodity fund based on capacity concerns of</p> <p>11 the futures fund?</p> <p>12 A My recollection of discussions with --</p> <p>13 with Mr. Szilagyi was that he felt there was an</p> <p>14 opportunity to apply the strategy to a new fund</p> <p>15 in different markets.</p> <p>16 He thought that should, at some point</p> <p>17 we decide to close the futures fund, then this</p> <p>18 would be another -- this would be an alternative</p> <p>19 for investors who were interested in the</p> <p>20 strategy.</p> <p>21 Q Okay. So -- I'm sorry. I'm going to</p> <p>22 have to ask the question again.</p> <p>23 A Sure.</p> <p>24 Q Was part of the decision to launch the</p> <p>25 commodity fund due to capacity concerns for the</p>	<p>Page 371</p> <p>1 Szilagyi about capacity and the decision to</p> <p>2 launch the futures fund -- sorry -- the</p> <p>3 commodity fund before, during, or after the soft</p> <p>4 close that was attempted for the futures fund?</p> <p>5 A I honestly don't remember that,</p> <p>6 remember whether it was before or after.</p> <p>7 Q Okay. So as of -- does this refresh</p> <p>8 your recollection that the attempted soft close</p> <p>9 was in the fall of 2015?</p> <p>10 A According to this document, yes, sure.</p> <p>11 Q Do you have any reason to believe that</p> <p>12 that's incorrect?</p> <p>13 A No.</p> <p>14 Q Okay. So fall of 2015, capacity is</p> <p>15 still a concern, correct?</p> <p>16 A We -- we continued to look forward to</p> <p>17 ensure that we were out in front of any capacity</p> <p>18 issues that might affect the strategy, yes.</p> <p>19 Q Okay. But it has progressed from the</p> <p>20 point of just discussing it to actually deciding</p> <p>21 to and implementing a soft close by the fall of</p> <p>22 2015?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 A That's when the soft close was</p>

<p>1 attempted.</p> <p>2 Q So were you part of the decision to 3 soft close the fund in the fall of 2015?</p> <p>4 A I was made aware of it.</p> <p>5 I don't know that I had a lot of input 6 into the decision, other than I continued to 7 provide my point of view on capacity of the 8 fund.</p> <p>9 Q Were you made aware of it after the 10 fact or before it was going to happen?</p> <p>11 A I think before.</p> <p>12 Q Did you say: This is a bad idea; we 13 shouldn't do it?</p> <p>14 A No.</p> <p>15 Q Did you agree with the decision?</p> <p>16 A Yes.</p> <p>17 Q Okay.</p> <p>18 BY MR. BENSON:</p> <p>19 Q You said that the soft close was 20 attempted. That was your word, "attempted"?</p> <p>21 A Yes.</p> <p>22 Q In October 2015.</p> <p>23 Why did you use the word "attempted" 24 as compared to "implemented" or "communicated"?</p> <p>25 A Well, because my understanding after</p>	<p>Page 374</p> <p>1 to understand what tools were available for us 2 to reduce inflows should that become necessary.</p> <p>3 Q Well, okay. You're not engaging in a 4 theoretical exercise at this point, right?</p> <p>5 You've made a decision to implement a 6 soft close to reduce inflows to the fund.</p> <p>7 You're not just running hypotheticals 8 about whether this could happen, correct?</p> <p>9 A Well, what my response is meant to 10 indicate is that we did not have an idea about 11 how this soft close would impact flows.</p> <p>12 We expected that they would be 13 reduced, certainly.</p> <p>14 We did not have any idea about whether 15 they would be reduced dramatically, slightly, 16 whether we'd see negative flows.</p> <p>17 So the point of this exercise was to 18 identify exactly what this tool would -- would 19 do for us.</p> <p>20 BY MR. WASSERMAN: I'm sorry. Is it 21 your testimony that it wasn't actually your 22 objective to reduce inflows but rather to see 23 whether a soft close would -- would reduce 24 inflows?</p> <p>25 THE WITNESS: It would both -- it was</p>
<p>1 the fact -- and, again, I'm very much unfamiliar 2 with mutual fund distribution and platforms and 3 how these things work.</p> <p>4 So I understand at a high level the 5 concept of a soft close.</p> <p>6 I was aware that a soft close was 7 going to go into effect.</p> <p>8 I later became aware that there were 9 some issues with implementing the soft close.</p> <p>10 Q Okay. I was just trying to 11 understand --</p> <p>12 A Sure.</p> <p>13 Q -- if you purposely used that word.</p> <p>14 Thank you.</p> <p>15 BY MR. SCHMIDT:</p> <p>16 Q Why did you agree with the decision to 17 soft close the fund in the fall of 2015?</p> <p>18 A Because at that time I felt like it 19 was prudent to understand whether a soft close 20 would be effective in allowing us to control 21 inflows -- inflows into the fund.</p> <p>22 Q And the reason you wanted to do that 23 was because you wanted to reduce inflows to the 24 fund?</p> <p>25 A I wanted -- for me personally I wanted</p>	<p>Page 375</p> <p>1 both.</p> <p>2 MR. WASSERMAN: Just to be clear, your 3 goal was to reduce inflows?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. WASSERMAN: In late -- late 2015?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. WASSERMAN: Okay.</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q Okay. So let me show you what's been 10 marked as Exhibit 94.</p> <p>11 (SEC Exhibit No. 94 was 12 marked for identification.)</p> <p>13 BY MR. SCHMIDT:</p> <p>14 Q So, for the record, this is an e-mail 15 dated October 20, 2015. Just to be clear, 16 you're not copied on this. It is -- relates to 17 the soft close that we've been discussing in 18 October 2015.</p> <p>19 Let me know when you've had a chance 20 to look at it.</p> <p>21 A All right. I've read it.</p> <p>22 Q So Mr. Szilagyi's e-mail, which starts 23 at the middle of the first page, if you go to 24 the first full paragraph. Not the "see below" 25 line but below that.</p>

<p style="text-align: right;">Page 378</p> <p>1 The first sentence says, "One of the 2 goals of the soft close of the futures fund is 3 to reduce inflows to the fund to maintain the 4 integrity of the investment strategy and 5 performance." Do you see that?</p> <p>6 A Yes.</p> <p>7 Q As of the fall of 2015, did you agree 8 with that statement?</p> <p>9 A Yes, I agree with -- as I testified 10 previously, one of the goals of the soft close 11 was to reduce inflows.</p> <p>12 Q "In order to maintain the integrity of 13 the investment strategy and performance" is the 14 question.</p> <p>15 So the full sentence is not "one of 16 the goal is to reduce inflows."</p> <p>17 The full sentence that I want to know 18 whether you agree or disagree with is the "one 19 of the goals of the soft close of the futures 20 fund is to reduce inflows to the fund to 21 maintain the integrity of the investment 22 strategy and performance."</p> <p>23 So as of the time of the soft close, 24 did you agree or disagree with that statement?</p> <p>25 A Yes. I agree with the statement that,</p>	<p style="text-align: right;">Page 380</p> <p>1 So all of those were -- were things 2 that we monitored carefully.</p> <p>3 Q Okay. So FCM capacity relates to the 4 amount of margins that the FCMs give you?</p> <p>5 A Yes.</p> <p>6 Q Okay. And what are your concerns with 7 volume, separate from any concerns related to 8 the FCMs?</p> <p>9 A They are the concerns that I addressed 10 in Exhibit 143, execution issues.</p> <p>11 Q Okay. Explain to me how -- when you 12 say, "volume," you're talking about the futures 13 fund percentage of the pit value?</p> <p>14 A That's what we monitored, yes, to try 15 and understand whether or not volume was 16 impacting the quality of our execution.</p> <p>17 Q Okay. So explain to me why -- I 18 assume an increase volume may have an negative 19 impact on execution quality. Is that what 20 you're trying to look for?</p> <p>21 A That's what we were trying to look 22 for, yes.</p> <p>23 Q Okay. So explain to me how that would 24 happen or why that would happen.</p> <p>25 A I'm not really certain other than that</p>
<p style="text-align: right;">Page 379</p> <p>1 at some point in the future, there might be a 2 level of assets that would impact that 3 performance so, at this time, we would like to 4 reduce inflows to avoid reaching that level.</p> <p>5 Q The concern was at some point, without 6 reducing inflows, the size would impact -- 7 negatively impact the investment strategy and 8 performance, correct?</p> <p>9 A That was a concern, yes.</p> <p>10 Q Okay. And I think before you said, in 11 the context of your 2014 discussion, your 12 concern about how it would impact the strategy 13 and performance is tied to the FCM capacity 14 issue?</p> <p>15 A That's correct.</p> <p>16 Q Okay. And all I'm wanting to know is, 17 looking forward a year now, right, from 2014 to 18 the fall of 2015, are there any additional 19 reasons that you're concerned at this point, or 20 are you still concerned about the FCM issue?</p> <p>21 A I mentioned the -- the different 22 metrics we use to look at capacity issues. So 23 we were always monitoring -- I was certainly 24 always monitoring execution quality, volume 25 numbers, FCM capacity.</p>	<p style="text-align: right;">Page 381</p> <p>1 is something we were concerned about. 2 It just seemed as though a larger 3 volume -- you know, we were concerned that -- 4 that large size may or may not affect pricing. 5 So we monitored it.</p> <p>6 Q But, like, why? In your mind -- just 7 sitting there, you're like, okay, we have this 8 issue with capacity. We are growing very fast. 9 There's some things we should look at.</p> <p>10 A Right.</p> <p>11 Q One of them is the amount of margin 12 that we are getting from FCM and whether that's 13 ever going to run out at some point --</p> <p>14 A Yes.</p> <p>15 Q -- right? That makes total sense?</p> <p>16 A Yes.</p> <p>17 Q So another one is whether our size is 18 going to affect our execution quality and the 19 prices we receive?</p> <p>20 A Yes.</p> <p>21 Q Okay. Why does that occur to you as a 22 potential problem?</p> <p>23 A It -- it -- again, I may be incorrect. 24 It just seems as though perhaps counterparties 25 would require a different pricing level for --</p>

<p>1 for size. That's not unusual in -- in any 2 marketplace I can think of. 3 Volume affects price. Sometimes it 4 improves it. Sometimes it works the other way. 5 Q You weren't concerned with an 6 improvement to price, right? 7 A Well, I certainly wasn't concerned 8 that that was going to happen, in other words, 9 as a risk, no. 10 Q Okay. The risk was that your size 11 would cause counterparties to raise prices on 12 you and, given the volume of contracts you 13 needed to execute, you had nowhere else to go 14 and had to pay the price? That's the risk, 15 right? 16 A Well, that's the risk in -- I wouldn't 17 characterize it as "nowhere else to go." 18 In other words, my concern was 19 entering trades, whether or not I would over 20 time get -- get fair execution prices. 21 Q Okay. If your counterparties raise 22 their prices, where else would you go? 23 A I simply wouldn't execute. And that 24 to me was the -- you know, the thing I was 25 monitoring, what --</p>	<p style="text-align: right;">Page 382</p> <p>1 A Yes. 2 Q Okay. Fair enough. 3 There was a third reason you gave me. 4 You said FCM. You said volume. And I think you 5 said execution issues. Is that -- 6 A That's -- 7 Q -- any different than the volume? 8 A -- no different than the volume. 9 Q Okay. Is that a full statement of the 10 reasons why you were concerned about capacity at 11 the time of the soft close in October of 2015? 12 A We had some -- and I -- I can't list 13 them now, but we -- we had included in our deck 14 some -- a few other more subjective or difficult 15 to quantify concerns about -- about capacity. 16 Q What deck? Are you talking about the 17 capacity analysis? 18 A Yes. 19 Q Okay. Do you know whether or not that 20 deck existed as of October 2015? 21 A I don't. 22 Q Okay. Well, I'll tell you we are 23 going to get to it. 24 So if something -- if you read that 25 and it says, yeah, that was also a concern back</p>
<p>1 Q That's also a risk to the strategy 2 too. 3 And -- 4 A Sure. 5 Q -- I apologize for talking over you. 6 That's also a risk to the strategy 7 because then, if you wanted to execute but you 8 don't because the prices have risen to an 9 unacceptable level, that's impacts how you can 10 execute the strategy and the fund's performance? 11 A Sure. 12 Q Okay. And that was a concern back in 13 October of 2015? 14 A No. That was something we were 15 monitoring. 16 In fact, that was not a concern back 17 there -- back then. 18 In other words, it was not a point at 19 which I said, wow, we are getting unfair prices; 20 we have to do something. 21 Q Okay. It was not actually occurring? 22 A Correct. 23 Q But it was a potential risk that you 24 were keeping an eye on to see whether it would 25 start occurring?</p>	<p style="text-align: right;">Page 383</p> <p>1 in 2015, let us know. 2 A Okay. 3 Q Okay. 4 BY MR. BENSON: 5 Q Before we move, I just want to make 6 sure, just to get back to this execution issue, 7 there was never a concern that the S&P contracts 8 were going to be illiquid assets, right? 9 It was just going to be more difficult 10 or more expensive to unload them, if you needed 11 to? 12 A Correct, and our concern really was on 13 the -- on the -- you know, just in normal 14 conducting our business, not unloading actually 15 on the entry side. 16 Q To putting on the trade? 17 A Exactly, could we put these on. 18 And you're correct in saying the S&P 19 contract is -- and maybe it is not absolutely 20 true if I say it's the most liquid in the world, 21 but it's one of the most liquid equity contracts 22 in the world. 23 So that gave us a lot of confidence 24 that we would have that liquidity going forward. 25 And, again, as I monitored the</p>

<p>1 situation over time, I did not observe any 2 issues.</p> <p>3 Q So just to bring that full circle, 4 your concerns related to capacity, they related 5 to FCM capacity, margin, and its volume 6 capacity, slash, execution, but never to the 7 liquidity of the -- of the actual futures 8 contract, right?</p> <p>9 A Right.</p> <p>10 MR. BENSON: Thank you.</p> <p>11 MR. WASSERMAN: Just to be --</p> <p>12 MR. SCHMIDT: Okay.</p> <p>13 MR. WASSERMAN: No. Go ahead.</p> <p>14 BY MR. SCHMIDT:</p> <p>15 Q The concerns that you had at the time, 16 the time of the October 2015 soft close 17 attempt --</p> <p>18 A Yes.</p> <p>19 Q -- did you keep those concerns to 20 yourself, or did you discuss them with Mr. 21 Szilagyi?</p> <p>22 A As I testified previously, we had not 23 frequent but somewhat regular discussions about 24 capacity.</p> <p>25 It really is a way -- again, this was</p>	<p style="text-align: right;">Page 386</p> <p>1 we are going forward through these capacity 2 discussions, that you're still being open and 3 frank with Mr. Szilagyi as to your potential 4 concerns and there's nothing that is a concern 5 to you that you're keeping from him.</p> <p>6 A That's correct.</p> <p>7 Q Okay. All right. So to the extent 8 you've discussed what you view to be potential 9 risk to the strategy, to the fund's performance 10 related to capacity, you're relaying those to 11 Mr. Szilagyi?</p> <p>12 A That's correct.</p> <p>13 Q Okay. Thank you.</p> <p>14 Was the soft close in October of 2015 15 of the futures fund successful?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A Again, I -- I -- I don't know the 19 details other than how it's been explained to 20 me, and I'm not certain I fully understand.</p> <p>21 Q Okay. Just to be clear, I want to 22 know what your understanding is.</p> <p>23 A All right.</p> <p>24 Q Even if it might be imperfect.</p> <p>25 What was told to you as -- and by whom</p>
<p>1 because I wanted to be forward looking.</p> <p>2 As we got larger and larger, I 3 suspected that some of these things might become 4 issues and wanted simply to be forward looking.</p> <p>5 So I had discussions with Mr. Szilagyi 6 from time to time. Most of the time to say: 7 We're keeping an eye on it. We are still fine, 8 but we have to keep an eye on it. So at some 9 point, if I tell you we are not fine, then we 10 need to be ready to do something.</p> <p>11 And that's what spurred the soft 12 close.</p> <p>13 Q Okay. The only -- the only thing I'm 14 trying to get to is that, in October of 2014, 15 you had a discussion with him, and you were very 16 frank and open with your concerns about size and 17 how that might be a potential risk going 18 forward, and you wanted to be forward looking; 19 is that fair?</p> <p>20 A Yes, that's fair.</p> <p>21 Q When we got to October 2015, you gave 22 me another reason -- not just the FCM reason 23 that existed in 2014, but you also said pit 24 volume and potential risk to execution quality.</p> <p>25 And I just want to make sure that, as</p>	<p style="text-align: right;">Page 387</p> <p>1 as to the reason the soft close was 2 unsuccessful?</p> <p>3 A I don't know because I actually don't 4 recall having a direct conversation with Mr. 5 Szilagyi about why it wasn't successful.</p> <p>6 But I do recall in conversations with 7 others, for sure, that -- understanding that 8 certain distribution platforms weren't able to 9 mechanically accomplish the soft close.</p> <p>10 In other words, it wasn't possible to 11 restrict orders such that they were only from 12 existing shareholders.</p> <p>13 Q Is -- anything else about how it was 14 explained to you?</p> <p>15 Is that the complete explanation you 16 got or the understanding that you have?</p> <p>17 A That's -- that's my basic 18 understanding.</p> <p>19 Q Okay. Have you ever heard of any 20 other fund implementing a soft close?</p> <p>21 A I don't recall a specific fund. But, 22 as I testified earlier, I'm familiar with the 23 concept.</p> <p>24 Q Okay. So other funds in the world 25 have figured out how to do this, right?</p>

<p style="text-align: right;">Page 390</p> <p>1 A Again, I don't know that for sure. 2 Q I'm just trying to understand does it 3 make sense to you that it is mechanically 4 impossible to execute a soft close? Does that 5 explanation make sense to you? 6 A Absolutely. 7 Q It does? 8 A Yes, it does. 9 Q Okay. Why? 10 A I have an extensive experience in 11 operations management, systems, and processes. 12 And it's not surprising to me at all on that 13 basis that something which sounds simple at the 14 top line in a -- in a multi-platform, whatever 15 that means, distribution network, that it would 16 not be possible to accomplish that. That's not 17 surprising. 18 MR. SCHMIDT: Okay. 19 BY MR. BENSON: 20 Q In your experience of operations 21 management, if you were aware of another market 22 participant having successfully achieved the 23 goal that you're trying to work on, would it be 24 unusual for you to pick up the phone and say: 25 Hey, I saw that you've successfully did X. We'd</p>	<p style="text-align: right;">Page 392</p> <p>1 Again, I'm very far removed from this 2 kind of activity. 3 MR. BENSON: Thank you. 4 BY MR. SCHMIDT: 5 Q So the soft close was not successful, 6 correct? 7 A Correct. 8 Q Did the capacity concerns go away? 9 A No. 10 Q Okay. Did the potential risks that 11 you've identified, which are related to these 12 FCM margin and the pit volume related to 13 execution quality -- did those disappear? 14 A The potential risk did not, no. 15 Q Okay. So I'm going to show you what's 16 been marked as Exhibit 144. 17 (SEC Exhibit No. 144 was 18 marked for identification.) 19 BY MR. SCHMIDT: 20 Q For the record, this an e-mail, March 21 16th, 2016, which appears to be from Mr. Walczak 22 to Kimberly Rios. 23 The subject is in response to an 24 e-mail Ms. Rios sent, the title of which is 25 "Soft Close, Items to Ponder."</p>
<p style="text-align: right;">Page 391</p> <p>1 like to brainstorm with you about how you did 2 that because we are considering how to do the 3 same? 4 Would that be out of bounds? Anything 5 to prohibited you from doing that? 6 A Nothing to prohibit it. That -- in my 7 view, sure, that would be a great -- a good 8 business practice. 9 Q So, for instance, if Fidelity fund or 10 Vanguard or kind of one of the behemoth mutual 11 fund complexes out there had successfully 12 completed a soft close on a large, you know, 13 scale, there's nothing that would have 14 prohibited anyone from Catalyst from reaching 15 out to them and say: Hey, I just want to 16 discuss with you how you have done with before? 17 A Nothing I'm aware of that would 18 prohibit that kind of conversation. 19 Q Did any -- did you ever present any 20 conversations where someone was like: Hey, we 21 should identify another fund that's done a soft 22 close and just make sure that we're dotting our 23 Is and crossing our Ts? 24 A I -- I don't remember any discussion 25 like that.</p>	<p style="text-align: right;">Page 393</p> <p>1 Let me know when you have had a chance 2 to look at that. 3 A Okay. 4 Q Okay. This is five months after the 5 attempted soft close in October 2015, correct? 6 A Correct. 7 Q The issue of a soft close is still on 8 the table, right? 9 A I'm not really sure what that means. 10 Q Okay. So your -- the soft close was 11 unsuccessful. We've established that, right? 12 A Yes. 13 Q But Mr. Szilagyi -- so Catalyst and 14 the futures fund are still discussing whether to 15 do a soft close; I guess to attempt another one; 16 is that correct? 17 A You know, I don't remember -- I don't 18 remember that -- that we were discussing a 19 second one. I don't remember a second soft 20 close being contemplated. 21 Q Okay. So when Ms. Rios writes, "He," 22 meaning Jerry Szilagyi, "discussed a soft close 23 with the latest stats during a late February 24 2016 phone call," you don't think that is 25 relating to a second possible soft close?</p>

<p style="text-align: right;">Page 394</p> <p>1 A I don't know. I wasn't on the call. 2 MR. BENSON: Right. But you received 3 Exhibit 144. Do you recall ever talking to 4 anyone about a soft close in February 2016? 5 THE WITNESS: Again, that's my 6 testimony. I honestly don't remember a second 7 attempt at a soft close. I don't know whether 8 that was -- I don't remember discussing a second 9 attempt. 10 I didn't remember that there was any 11 resolution to the reasons for the failure of the 12 first one.</p> <p>13 BY MR. SCHMIDT:</p> <p>14 Q Okay. So fair to say this doesn't 15 refresh your recollection at all as to whether 16 you had any discussions about a potential soft 17 close in the first quarter of 2016?</p> <p>18 A No.</p> <p>19 Q Okay. There's a rather dramatic 20 statement in here that somebody at ML, perhaps 21 Merrill Lynch, told Mr. Szilagyi the fund is 22 going to, quote, blow up. This rattled him a 23 bit.</p> <p>24 A Yes.</p> <p>25 Q Do you see that?</p>	<p style="text-align: right;">Page 396</p> <p>1 I don't remember a specific 2 conversation related to the fund blowing up at 3 Merrill Lynch. 4 Q Okay. 5 BY MR. WASSERMAN: I have a few 6 questions on this. 7 MR. SCHMIDT: Yeah. 8 BY MR. WASSERMAN: 9 Q First, how could somebody misinterpret 10 the phrase "blow up"? 11 A Well, it -- I mean, I'll give you my 12 personal opinion. 13 When I see something like that, it 14 suggests that something about the fund is going 15 to end its life. 16 Q In other words, somebody could 17 interpret the phrase to mean the fund is going 18 to collapse? 19 A In some way, yes. 20 Q And you're certain that -- but when 21 Ms. Rios wrote "blow up," that she meant 22 acceleration in the increase in AUM and not 23 collapse? 24 A I -- I am not certain of anything on 25 this e-mail. I'm giving you my best</p>
<p style="text-align: right;">Page 395</p> <p>1 A I do. 2 Q Do you remember any discussion about 3 whether the fund might blow up? 4 A I do remember that because it's a -- 5 it's a phrase that can be misinterpreted, and I 6 do remember talking to Ms. Rios about that. 7 Q What do you remember? 8 A What I remember is that Jerry had been 9 told that the fund assets might accelerate in 10 growth, meaning blow up in terms of sales at 11 Merrill Lynch and other places. 12 Q And that rattled him quite a bit? 13 A Apparently -- that was Ms. Rios's 14 interpretation, apparently, from this e-mail. 15 Q And that would make sense if capacity 16 is an ongoing concern, right? 17 A Yes. 18 Q Okay. So did you have any discussions 19 with Mr. Szilagyi about his concern that the 20 assets under management of the futures fund 21 might blow up and accelerate too quickly? 22 A I don't remember any out of the 23 ordinary. 24 As I've testified, we had periodic 25 discussions about capacity.</p>	<p style="text-align: right;">Page 397</p> <p>1 recollection. 2 Q Okay. I want to draw your attention 3 to -- to one other part of the e-mail. It's the 4 second -- quote, question to ponder, end quote, 5 where Ms. Rios writes, "Have you felt a sweet 6 spot when trading through all the different AUM 7 levels where everything went fairly smooth such 8 as at 2B," which I assume means \$2 billion. 9 A (Nodding head.) 10 Q Parenthesis, November. I assume she's 11 referring to November 2015? 12 A I'm sorry. I lost you now. 13 Which line are you referring to when 14 you talk about "November"? 15 Q I'm in the second dash under 16 "questions to ponder." 17 A Okay. Okay. I see it. And -- so I'm 18 sorry. What was your question? 19 Q November -- N-o-v refers to November 20 2015? Is that your understanding? 21 A I don't know which November. 22 Apparently that was a November when the fund was 23 at \$2 billion. 24 So, again, I don't have asset levels 25 in my head about when the fund was a</p>

<p>1 particular --</p> <p>2 Q Well, we discussed before about how in 3 2014 -- May 2014 the fund was under 500 million, 4 right?</p> <p>5 A Yes.</p> <p>6 Q So she must be talking about November 7 2015, correct?</p> <p>8 A I mean -- oh, sure. Actually -- sure, 9 now that I -- I recall now the date of the 10 e-mail to be March of 2016. So certainly that's 11 likely, yes.</p> <p>12 QOkay. So she says, "Have you felt a 13 sweet spot when trading through all the 14 different AUM levels where everything went 15 fairly smooth, such as at 2 billion in November 16 was it comfortable without any constraints?"</p> <p>17 In March of 2016 -- this is my 18 question now. I'm not reading from the 19 document.</p> <p>20 A Okay.</p> <p>21 Q In March of 2016, the execution issues 22 had actually manifested themselves, correct?</p> <p>23 A Not that I recall, no.</p> <p>24 Q Well, so why would she say -- why 25 would she suggest that there were some times</p>	<p>Page 398</p> <p>1 MR. SCHMIDT: Do you have any reason 2 to believe that Mr. O'Keefe wouldn't be telling 3 you the truth when he said that?</p> <p>4 THE WITNESS: No.</p> <p>5 MR. SCHMIDT: Okay.</p> <p>6 BY MR. WASSERMAN:</p> <p>7 Q And as we were discussing before, the 8 concern specifically is that, when a trader 9 knows -- a trader in the pit knows that you want 10 to get into or get out of a position, in a large 11 volume, that he make -- may make you pay a 12 higher price for that, correct?</p> <p>13 A I don't have any way of knowing that 14 other than observation.</p> <p>15 Q That's the concern, as you 16 articulated --</p> <p>17 A That's the concern. Absolutely.</p> <p>18 Q And that concern --</p> <p>19 A Let -- let me amend my answer, that 20 the concern is not so much around the trader's 21 knowledge of who the counterparty is but more 22 about simply the size of the trade.</p> <p>23 And, in fact, that's how we managed 24 trades as -- as we grew in size, was to cut our 25 trade size down.</p>
<p>Page 399</p> <p>1 prior to that when execution -- I'm sorry -- 2 when trading had been smooth and times when 3 trading hadn't been smooth?</p> <p>4 A I don't know.</p> <p>5 My -- my response to her and -- in any 6 of these types of discussions were at any 7 moment, if I felt like execution was constrained 8 by capacity, I would raise that issue and --</p> <p>9 Q Well, it's not -- it's not binary, 10 right? It's not like all of a sudden you can't 11 trade, right?</p> <p>12 A Correct.</p> <p>13 Q As the fund increases in size, the 14 traders in the pit become more and more aware of 15 your positions, correct?</p> <p>16 A I don't know if their awareness of 17 my -- I don't know how their awareness of my 18 positions is or is not determined, to be honest.</p> <p>19 Q Jeremy has communicated to you that 20 the traders in the pit know your -- what your 21 positions are, right?</p> <p>22 A From time to time, he said that, yes.</p> <p>23 Q Do you --</p> <p>24 MR. SCHMIDT: Do you have --</p> <p>25 MR. WASSERMAN: Sorry. Go ahead.</p>	<p>Page 401</p> <p>1 Q Right. But it's related to the -- the 2 knowledge of your positions because if, as 3 expiry approaches, a trader in a pit knows that 4 you have a large position you need to get out 5 of, that's significant, correct?</p> <p>6 A It could be.</p> <p>7 Q Okay. And that's part of the concern 8 that you have about execution quality, correct?</p> <p>9 A At this -- at this moment in time, 10 certainly I -- my main concern was on the entry 11 side: Could I consistently enter trades at a 12 fair price?</p> <p>13 Q And by March of 2015 -- I'm sorry.</p> <p>14 By March of 2016, there had been times 15 when that entry had been smooth, and there had 16 been times when that entry hadn't been smooth, 17 right?</p> <p>18 A That is also true for time frames 19 prior to September of 2013 and post-September of 20 2013 and throughout 2014. That statement is 21 correct.</p> <p>22 Q Okay. So the answer to my question is 23 yes, that prior to March of 2016, there had been 24 times when entry into a trade was smooth and 25 times when entry into a trade wasn't smooth?</p>

<p style="text-align: right;">Page 402</p> <p>1 A That is always correct, independent of 2 size.</p> <p>3 Q And, more specifically, there were 4 times when you tried to enter into a trade and 5 you got exactly the price that you wanted and 6 other times when you tried to enter into a trade 7 and you didn't get exactly the price that you 8 wanted, right?</p> <p>9 A Correct.</p> <p>10 Q And as the fund got bigger and bigger, 11 from 2014 to 2016 to early 2016, the frequency 12 with which you didn't get the price that you 13 wanted increased; is that --</p> <p>14 A I did not notice that, no.</p> <p>15 Q You didn't notice that at all?</p> <p>16 A I did not.</p> <p>17 Q So why does Ms. Rios say here -- or 18 I'm sorry.</p> <p>19 Why does Ms. Rios suggest here that 20 there are times when trading was smooth and 21 times when trading was not smooth?</p> <p>22 A Because, as I just testified, that is 23 always the case.</p> <p>24 Q And -- and the ease with which you're 25 able to execute trades did not change at all as</p>	<p style="text-align: right;">Page 404</p> <p>1 in mid 2016 -- I'm sorry.</p> <p>2 In your mind, that was the same in mid 3 2014 as that was in March of 2016?</p> <p>4 A Again, my -- it's not a binary 5 situation. So I relied on my judgment --</p> <p>6 Q I'm not asking you -- I am not -- I'm 7 not asking you whether it was binary or not.</p> <p>8 I'm asking you whether there was a 9 difference in the ease with which you were able 10 to execute trades between 2014 and March 2016.</p> <p>11 A And I've responded to that question 12 so -- but I'll respond again by saying I did not 13 notice any systemic, sustained difference in 14 execution.</p> <p>15 I noticed only the normal fluctuation 16 in execution quality across days, weeks, and 17 months.</p> <p>18 Q When you want to execute a trade, you 19 call J.J. in the pit?</p> <p>20 A That's correct.</p> <p>21 Q And J.J. tells you what kind of prices 22 he can get for that trade, right?</p> <p>23 A That is correct.</p> <p>24 Q And sometimes he tells you the price 25 is exactly what you want, and sometimes he tells</p>
<p style="text-align: right;">Page 403</p> <p>1 the fund grew from 500 million to 2 billion?</p> <p>2 A As you -- as you suggested earlier, 3 it's not binary. It's -- it's subjective.</p> <p>4 So my judgment was that, over a 5 reasonable time frame, there continued to be 6 times when I got the price I liked and times 7 when I didn't get the price I liked, and I could 8 not discern any pattern to that trade related 9 to -- to size.</p> <p>10 Q Okay. Was there -- is it your 11 testimony that it did not become increasingly 12 more difficult to get the price you wanted as 13 the fund grew from 500 million to 2 billion?</p> <p>14 A That is correct.</p> <p>15 Q That it didn't -- it in no way became 16 increasingly difficult to execute your trades as 17 the fund grew from 500 million to 2 billion?</p> <p>18 A I did not perceive any -- what's the 19 right word?</p> <p>20 I didn't perceive any sustained 21 difficulty. I perceived simply the normal back 22 and forth of trading. Some days you get good 23 prices. Some days you don't? That's -- I never 24 perceived anything different.</p> <p>25 Q And, in your mind, that was the same</p>	<p style="text-align: right;">Page 405</p> <p>1 you that the price is not exactly what you want, 2 right?</p> <p>3 A Correct.</p> <p>4 Q Okay. In 2016 did he tell you with 5 more frequency than in 2014 that you couldn't 6 get the prices that you want?</p> <p>7 A Again, I've responded to this, and 8 I'll respond again, that it's not binary. It's 9 not, to my mind, at least, quantifiable, but -- 10 so using my judgment in terms of interpreting 11 that frequency, I did not notice a difference.</p> <p>12 Q There was no difference between 2014 13 and 2016?</p> <p>14 A Again, it's not quantifiable or 15 binary.</p> <p>16 I did not notice a significant 17 sustained difference in execution quality.</p> <p>18 Q I'm not asking you whether you noticed 19 a significant sustained difference.</p> <p>20 I'm asking you whether you noticed any 21 difference between 2016, when the fund was at \$2 22 billion, and 2014, when it was at 500 million?</p> <p>23 A And I'm not able to answer about 24 noticing any difference because there are 25 differences every day.</p>

<p>1 So what I'm telling you is that, over 2 time, we saw good execution, bad execution, 3 everything in between, and in that pattern of 4 good, bad, today, tomorrow, this week, next 5 month, I did not notice a sustained difference 6 in the level of execution quality.</p> <p>7 Q As the fund grew from 500 million to 2 8 billion, did the execution quality decrease?</p> <p>9 MR. BYLINA: I think he's answered 10 your question a number of times.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q I am asking for a yes-or-no answer.</p> <p>13 A I've described to you it's not a 14 yes-or-no question.</p> <p>15 Q Did the execution quality stay the 16 same from -- from \$500 million -- from \$500 17 million to \$2 billion?</p> <p>18 MR. ZILIAK: Sam, with respect, you're 19 familiar with statistics. I mean, there's only 20 a certain power of test to the statistic.</p> <p>21 There's a certain signal-to-noise ratio. He's 22 described --</p> <p>23 MR. WASSERMAN: There's a certain 24 what?</p> <p>25 MR. ZILIAK: Signal-to-noise ratio.</p>	<p>Page 406</p> <p>1 execution quality that you were getting in 2014?</p> <p>2 MR. BYLINA: He's answered the 3 question.</p> <p>4 THE WITNESS: I have, many times.</p> <p>5 BY MR. WASSERMAN:</p> <p>6 Q Was it or wasn't it generally on a 7 day-to-day basis?</p> <p>8 A On a day-to-day basis, it was always 9 different. I could notice no sustained 10 difference in execution quality over some 11 reasonable period of time.</p> <p>12 MR. MORAN: Did you believe you could 13 execute your investment strategy as effectively 14 in 2016 as you could in 2014?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. MORAN: In light of the execution 17 issues we have been discussing?</p> <p>18 THE WITNESS: In -- in all lights, 19 yes.</p> <p>20 BY MR. WASSERMAN:</p> <p>21 Q So why did you need a soft close?</p> <p>22 A We were forward looking so that, if 23 there came a time when I could not make that 24 statement and could not stand up and say, yes, I 25 believe that I can execute the strategy, if that</p>
<p>Page 407</p> <p>1 He described variability and execution 2 quality without any change in the input. You're 3 asking if he noticed any change in the input. 4 He's saying there's such variability that he 5 can't discern a difference as a function of that 6 particular input.</p> <p>7 MR. WASSERMAN: Respectfully, Zach, 8 I'm not getting a direct answer to my question.</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q Is it your testimony that there was no 11 difference between your execution quality in 12 2014 as there was in 2016?</p> <p>13 A My testimony is that I did not 14 perceive a difference in execution quality, 15 given the fact that there is a difference in 16 execution quality every single day, every single 17 week, every single month. There are always 18 differences.</p> <p>19 I did not perceive a difference that 20 would cause me to say, on the whole, it is 21 different now. I did not perceive that, no.</p> <p>22 Q Sitting here in March of -- I'm sorry.</p> <p>23 When you were receiving this e-mail in 24 March of 2016, was the execution quality you 25 were getting in the pit different than the</p>	<p>Page 409</p> <p>1 time arrived, we wanted to have a tool in place 2 to control inflows, and in advance of that time 3 arising, we thought it was prudent to begin to 4 constrain inflows.</p> <p>5 Q But there's a sense of urgency to this 6 e-mail here. I mean, you're not talking in 7 hypotheticals anymore. You're actually trying 8 to restrict inflows.</p> <p>9 Why would you actually be trying to 10 restrict inflows if you're seeing no change in 11 execution?</p> <p>12 MR. BYLINA: What e-mail are you 13 talking about?</p> <p>14 MR. WASSERMAN: Exhibit 144.</p> <p>15 MR. BYLINA: That's Kimberly to Ed. 16 That's not Ed talking about anything. This is 17 an e-mail from Kimberly to Ed, talking about 18 what she spoke to with Jerry.</p> <p>19 MR. WASSERMAN: I understand that. My 20 question stands.</p> <p>21 MR. BYLINA: What is your question?</p> <p>22 MR. WASSERMAN: Can you read back my 23 question?</p> <p>24 (The reporter read back the record.)</p> <p>25 MR. BYLINA: He's not trying to do</p>

<p>1 anything.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q The question is the question. Why 4 would you -- the question is the question.</p> <p>5 A So the only thing I can tell you is 6 I'm not certain -- I can't speculate on why Ms. 7 Rios wrote this e-mail the way she did.</p> <p>8 She tends to have a different 9 communication style than I do. So whether it's 10 urgent or -- a sense of urgency or not urgency, 11 I really can't interpret that from this e-mail.</p> <p>12 BY MR. SCHMIDT:</p> <p>13 Q Mr. Walczak, there -- the difference 14 between a soft close and hard close -- right? I 15 think you have talked about this -- is a hard 16 close, you cut off all inflows --</p> <p>17 A Yes.</p> <p>18 Q -- into the fund, correct?</p> <p>19 A Right.</p> <p>20 Q Soft close, generally speaking, means 21 that current investors can still add money to 22 their investment but new investors can't, 23 correct?</p> <p>24 A Correct.</p> <p>25 Q Okay. In October of 2015, Catalyst</p>	<p>Page 410</p> <p>1 that statement.</p> <p>2 As I said, I don't know what 3 "modified" means. I don't know what "true soft 4 close" means. No idea.</p> <p>5 Q Nobody ever discussed those with you?</p> <p>6 A I don't remember those terms. I 7 remember, as a part of the discussion, a soft 8 close, a soft close advisor level, a soft 9 close --</p> <p>10 Q Okay. So that's the same thing.</p> <p>11 Right? A soft close at the advisor level versus 12 a complete soft close or a true soft close and 13 then a hard close, those are concepts that --</p> <p>14 A Discussed.</p> <p>15 Q -- were discussed with you?</p> <p>16 A That's right.</p> <p>17 Q Right? I don't care whether they use 18 the words "modified soft close" or "soft close 19 at the advisor level."</p> <p>20 The concepts were discussed with you?</p> <p>21 A Yes.</p> <p>22 Q Okay. And the first concept was 23 attempted and failed, correct?</p> <p>24 A I don't know what the first concept 25 was. I don't know if it was attempted at the</p>
<p>Page 411</p> <p>1 did what has been characterized as a modified 2 soft close, right? Not a true soft close?</p> <p>3 A I have no idea what a modified soft 4 close means.</p> <p>5 Q Well, what it is means is that, if an 6 investment advisor had a client invested in the 7 futures fund, that client could invest more and 8 any other client of that same investment advisor 9 could invest in the futures fund whether or not 10 they had a preexisting investment. Does that 11 sound familiar as to --</p> <p>12 A I heard that being discussed.</p> <p>13 Q Okay. As a modified soft close?</p> <p>14 A I don't remember what it was called.</p> <p>15 Q Okay. So this e-mail references 16 that -- Bullet Point 3 under "questions to 17 ponder," what are your overall thoughts on doing 18 a true soft close in the future? I'm guessing 19 your answer to that is, quote, that's up to 20 Jerry, end quote.</p> <p>21 Okay. So Ms. Rios is talking about a 22 true soft close as opposed to the modified soft 23 close that was a failure. Does that ring any 24 bells to you?</p> <p>25 A No. I have no idea what she meant by</p>	<p>Page 413</p> <p>1 advisor level, if it was attempted at the 2 shareholder level. Not my area of involvement 3 and not my area of interest. So I don't 4 understand the details of those things.</p> <p>5 Q You have no knowledge as to whether 6 one or both of those was attempted?</p> <p>7 A I have no idea.</p> <p>8 MR. ZILIAK: For the record, we are at 9 10:00 o'clock. I don't know if this is a 10 natural stopping point or --</p> <p>11 MR. SCHMIDT: Yeah. We are off the 12 record at 10:02.</p> <p>13 (A brief recess was taken.)</p> <p>14 BY MR. SCHMIDT:</p> <p>15 Q Okay. Back on the record at 10:22 16 a.m.</p> <p>17 Mr. Walczak, have you had any 18 substantive discussions with the staff of the 19 SEC or the CFTC during the break?</p> <p>20 A No.</p> <p>21 Q Okay. So before we took a break, you 22 told us about capacity analyses that were done 23 internally at the futures fund that resulted in 24 slide deck presentations, correct?</p> <p>25 A Correct.</p>

<p style="text-align: right;">Page 414</p> <p>1 Q More than one, less than ten. You 2 don't remember how many?</p> <p>3 A Correct.</p> <p>4 Q Okay. I'm going to show you what's 5 been marked as SEC Exhibit 34.</p> <p>6 25</p> <p>7 (SEC Exhibit No. 34 was 8 marked for identification.)</p> <p>9 BY MR. SCHMIDT:</p> <p>10 Q So, for the record, this is an e-mail 11 from Ms. Rios to Mr. Szilagyi with you cc'd. 12 It's dated March 15, 2017. And the subject is: 13 Capacity presentations. And it has three PDFs 14 attached dated May 2016, August 2016, and 15 November 2016.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Okay. Do you believe that this was 19 all of the capacity presentations that existed 20 as of March 2017?</p> <p>21 A I don't know.</p> <p>22 Q Can you think of any reason why 23 certain capacity presentations would not be 24 provided to Mr. Szilagyi at this time?</p> <p>25 A I don't know the nature of his request</p>	<p style="text-align: right;">Page 416</p> <p>1 the futures fund?</p> <p>2 A Yes.</p> <p>3 Q Okay. Does that indicate that this 4 probably refers to the futures fund and not the 5 commodity fund?</p> <p>6 A I'm sorry. But just given an error in 7 the title, I'm checking each page --</p> <p>8 Q Sure.</p> <p>9 A -- to see if there might be other 10 errors.</p> <p>11 Q Sure.</p> <p>12 A No. That looks like it all relates to 13 the futures fund.</p> <p>14 Q Okay. Did you have capacity concerns 15 related to the commodity fund?</p> <p>16 A No.</p> <p>17 Q Okay. So it wouldn't make sense that 18 you would even do a capacity analysis for the 19 commodity fund, right?</p> <p>20 A Well, it might make sense to do a 21 five-year plan, but at this moment we did not 22 have concerns.</p> <p>23 Q Okay. Do you remember why this 24 analysis was done?</p> <p>25 A I believe I've testified that we</p>
<p style="text-align: right;">Page 415</p> <p>1 which she's responding to. So, no, I don't.</p> <p>2 Q So you have no idea, one way or the 3 other?</p> <p>4 A Right.</p> <p>5 Q Okay. In any event, it's fair to say 6 there's at least three of them?</p> <p>7 A There are three here certainly.</p> <p>8 Q So all three of the PDFs that were 9 attached to this e-mail are part of this 10 exhibit. Okay?</p> <p>11 A Okay.</p> <p>12 Q So if you look on the second page, it 13 says -- it actually appears to be misnamed as 14 the "Commodity Fund Five-Year Plan." I think if 15 you flip through the presentation, do you think 16 that this presentation actually refers to the 17 commodity fund or the futures fund?</p> <p>18 Actually, if you look at that page you 19 just looked at, it says, "Current FCM status, 20 1.3 billion in AUM"?</p> <p>21 A Yes.</p> <p>22 Q Was that ever an accurate description 23 of the commodity fund?</p> <p>24 A No.</p> <p>25 Q Was it ever an accurate description of</p>	<p style="text-align: right;">Page 417</p> <p>1 have -- had been forward looking on capacity for 2 some period of time.</p> <p>3 Q Right. You've testified that it was a 4 concern as far back as at least the fall of 5 2014. We're now, you know, several years down 6 the road, and there's a formal analysis that's 7 being done. And I'm just wondering why we are at 8 the formal analysis stage. Did something 9 happen?</p> <p>10 A To the best of my recollection, 11 nothing happened other than I felt that we 12 needed to quantify some of the issues we had 13 discussed around capacity to -- to better inform 14 decisions.</p> <p>15 Q So the decision to do this 16 presentation was your decision, not in response 17 to requests by Catalyst?</p> <p>18 A I believe that's correct.</p> <p>19 Q Okay.</p> <p>20 A I don't recall a request by Catalyst.</p> <p>21 Q And after it was prepared, did you 22 send it to Catalyst?</p> <p>23 A Ms. Rios prepared it. We reviewed it.</p> <p>24 I don't recall -- I don't recall if we sent it 25 to him, if we had a meeting.</p>

<p>1 At some point they got it, sure.</p> <p>2 Q Well, obviously, they got it in March 3 of 2017.</p> <p>4 A Correct.</p> <p>5 Q I'm asking do you believe that they 6 got it in or about May of 2016 when it's dated?</p> <p>7 A That's likely.</p> <p>8 Q If you go to the third slide -- I'm 9 sorry. I guess it's the second. It's entitled 10 "Volume." Do you see that?</p> <p>11 A Yes.</p> <p>12 Q So in May of '16, the CME group 13 reached out to the futures fund and asked for a 14 phone call? Is that accurate?</p> <p>15 A I think that's correct.</p> <p>16 Q Were you on the phone call?</p> <p>17 A I believe so.</p> <p>18 Q What was their concern?</p> <p>19 A I don't recall.</p> <p>20 Q Okay. It says -- the slide -- I'm 21 reading from the slide. "We understand that we 22 are on their radar but also know their limit is 23 28,000 net short contracts, and we have not been 24 near that number yet."</p> <p>25 Did they call you to talk about how</p>	<p>Page 418</p> <p>1 that they monitored, and we have not been near 2 that number yet, is what she says.</p> <p>3 Q Okay. The next bullet point down says 4 that "We," meaning the futures fund, "are aware 5 that the futures fund trades certain months and 6 strikes to where the fund is a hundred percent 7 of that particular volume."</p> <p>8 Was that a concern of yours?</p> <p>9 A No, because, as Ms. Rios continues, 10 "We have not seen any issues of this regarding 11 trading."</p> <p>12 Q Okay. ADM brought this issue up as 13 one of their concerns, correct?</p> <p>14 A That's what it says here, yes.</p> <p>15 Q Did ADM bring this issue up as one of 16 their concerns?</p> <p>17 A I don't recall that specifically, no.</p> <p>18 Q You don't recall any concerns voiced 19 by ADM to the futures fund?</p> <p>20 A In my conversations with ADM, their 21 concern was over options trading in general.</p> <p>22 Q What exactly about options trading in 23 general?</p> <p>24 A They had a concern over the inherent 25 risks in options trading as a part of their</p>
<p>1 large your positions are getting, how many 2 contracts?</p> <p>3 A I -- I don't remember that, no.</p> <p>4 Q What do you remember?</p> <p>5 A I remember that was a phone call from 6 the CME to one of their larger customers, just 7 to get acquainted. I think that's how they 8 expressed it.</p> <p>9 Q Has that ever happened to you before?</p> <p>10 A What? Has -- has what happened?</p> <p>11 Q Before this particular time, has a CME 12 group ever reached out to you, as one of its 13 larger customers, to have a phone call?</p> <p>14 A I don't know that before this we were 15 what they considered to be one of their larger 16 customers. So I don't remember it happening, 17 no.</p> <p>18 Q You can't remember anything else about 19 that call, what was communicated, what they 20 said, what you said, anything?</p> <p>21 A No. As I said, as I'm looking at this 22 now, what I recall is it was a get-acquainted 23 kind of phone call, introductory contact.</p> <p>24 As -- as Ms. Rios maintains in this 25 bullet, they apparently had some internal limit</p>	<p>Page 419</p> <p>1 client portfolio.</p> <p>2 Q Unrelated -- they didn't have any 3 concern in their role as an FCM to the futures 4 fund?</p> <p>5 I don't understand what you're saying.</p> <p>6 A I'm saying that, what I recall from 7 having conversation with ADM is, when they 8 looked at -- as I think FCMs do -- across their 9 client portfolio to balance their risks, they 10 expressed a particular concern over having high 11 volumes of options trading in their customer 12 client portfolios.</p> <p>13 Q And why are they bringing that up with 14 you at the futures fund?</p> <p>15 A Because we are options traders and we 16 are one of their clients.</p> <p>17 Q Did they say that you're a significant 18 source of the risk?</p> <p>19 A They didn't say that, no.</p> <p>20 Q Okay. You don't remember anything 21 else that ADM brought up?</p> <p>22 A No.</p> <p>23 Q Nothing about volume?</p> <p>24 A If they brought something up about 25 volume, they have complained from time to time</p>

<p style="text-align: right;">Page 422</p> <p>1 we don't do enough business with them, and they 2 are a relatively small part of our trade 3 allocation. So those discussions may have been 4 had from a commercial standpoint, but I'm not 5 sure.</p> <p>6 Q The last bullet point indicates that, 7 in April of 2016, the initial margin capacity at 8 the FCMs was insufficient for the fund's trading 9 needs.</p> <p>10 A Is that an accurate statement?</p> <p>11 Q Do you have any reason to believe 12 that -- do you think Ms. Rios drafted this 13 presentation?</p> <p>14 A Yes.</p> <p>15 Q Do you have any reason to believe that 16 she's being untruthful when she makes that 17 statement in here?</p> <p>18 A I don't know what she means by 19 "insufficient."</p> <p>20 Q I don't recall being unable to enter 21 trades based on insufficient margin.</p> <p>22 Q Do you think she made it up?</p> <p>23 A No. I'm just not certain what she</p>	<p style="text-align: right;">Page 424</p> <p>1 Q Okay. In April 2016, who's putting on 2 the trades?</p> <p>3 A I am.</p> <p>4 Q How would Ms. Rios reach these 5 conclusions without your input?</p> <p>6 A That's exactly the question that comes 7 to my mind when I read this bullet. I am not 8 sure.</p> <p>9 Q Did it come to your mind when she 10 presented this to you?</p> <p>11 A Again, I don't recall this particular 12 bullet being a main part of our discussion.</p> <p>13 Q Can you say, as you're sitting here 14 today, that these statements in this bullet 15 point are incorrect?</p> <p>16 A I -- sitting here today, I can tell 17 you that I don't recall having a discussion 18 about this bullet point and I'm uncertain about 19 what she actually meant by it.</p> <p>20 Q Okay. I understand that. That's not 21 my question.</p> <p>22 Q Can you tell me that these are true, 23 not true, or you don't know?</p> <p>24 A I don't know.</p> <p>25 Q Okay. So if you look at the next</p>
<p style="text-align: right;">Page 423</p> <p>1 means, whether she felt uncomfortable with the 2 margin we had relative to what she perceived we 3 needed to trade the fund, whether we were close 4 to limits.</p> <p>5 I can't speculate over what she meant 6 by saying that.</p> <p>7 All I can tell you is that I don't 8 recall not having enough margin to trade the 9 fund at any point.</p> <p>10 Q Okay. But you could have not had 11 enough margin and you don't recall it?</p> <p>12 A Anything is possible that I might not 13 recall. That's correct.</p> <p>14 Q Well, when you got this, did you ask 15 her: What are you talking about?</p> <p>16 A I don't remember.</p> <p>17 Q Okay. She goes on to say that the 18 futures fund was traded more to satisfy FCM 19 relationships than trading regular types of 20 positions per the fund strategy.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Is that an accurate statement?</p> <p>24 A I don't recall ever trading to satisfy 25 FCM relationships.</p>	<p style="text-align: right;">Page 425</p> <p>1 slide, this is May 2016, The Perfect World 2 Scenario for the Futures Fund, right?</p> <p>3 A The top of this slide is Five-Year 4 Projection, or is it a different one?</p> <p>5 Q The first line, The following 6 spreadsheet projects five-year numbers in a, 7 quote, perfect world scenario.</p> <p>8 A All right. I'm on the same page.</p> <p>9 Q Do you see that?</p> <p>10 A I do.</p> <p>11 Q Okay. So the assumption is zero 12 incoming money from sales. What does that mean?</p> <p>13 A That means, for purposes of doing this 14 analysis, we assumed no new money coming in.</p> <p>15 Q An absolute hard close as of May 2016?</p> <p>16 A No.</p> <p>17 Q What does it mean?</p> <p>18 A It means that, for purposes of doing 19 this analysis, we removed the variable of 20 inflows because it was uncertain about what 21 money would come in the fund.</p> <p>22 Q So the assumption you used, though, 23 was zero?</p> <p>24 A We used zero in order to look ahead 25 five years and understand that, if we had no</p>

<p>1 inflows, what would the fund look like? 2 And it's a typical analysis 3 methodology. Once you establish that baseline, 4 you can then look and say: How much money can 5 we allow to come in based on the analysis that's 6 been done? 7 And I do recall that was one of the 8 assumptions I instructed her to take going 9 forward. 10 Q Okay. Did you instruct her to take 11 these other assumptions, too, for this analysis? 12 A Sure. We certainly reviewed them, 13 yes. 14 Q And the end result of that is that the 15 fund would not -- of that analysis or projection 16 is that the fund would not approach \$5 billion 17 until 2021, correct? 18 A Let me take a look. I don't recall 19 off the top of my head. 20 Q It's on the next page. 21 A Yes. That looks like the conclusion 22 of the spreadsheet. 23 Q And the assets under management 24 actually were vastly accelerated from that 25 projection, the actual ones?</p>	<p style="text-align: right;">Page 426</p> <p>1 A That was Ms. Rios's conclusion, yes. 2 Q Did you agree with that conclusion? 3 A I agreed that there was a possibility. 4 I agreed with the "could." 5 Q That's what it says; so do you agree 6 or not agree? 7 A I agree. 8 Q Okay. Thank you. 9 It says that there also could be a 10 reduction in the amount of daily contracts that 11 could be traded. 12 Would that be a risk to the fund 13 strategy? 14 A That would be a risk to the fund 15 strategy, yes. 16 Q Okay. It also says the fund is in 17 the, "top five of volume each month," and, 18 "likely in the top three." 19 Do you see that? 20 A I see that. 21 Q Why is that important? 22 A I think it's important to demonstrate 23 that, while we are certainly not the largest 24 participant in the market, we are potentially in 25 the top five so that we are a large participant</p>
<p>1 A Again, as I said before, I don't have 2 in my head levels of "actual" over a particular 3 time frame. 4 Q Before the drawdown that occurred in 5 late '16 and early 2017, the fund was over \$4 6 billion, correct? 7 A Yes. That I know. Yes. 8 Q If you look at volume consideration, 9 which is the next slide, it says that there are 10 only three banks that acted -- act as market 11 makers? 12 A I think what it says is we are aware 13 of three banks. 14 Q Okay. 15 A There may be more. 16 Q All right. 17 A Okay. 18 Q If any of them exited, that would have 19 a significant negative impact on the fund 20 strategy, correct? 21 A It could, which is the conclusion, but 22 we're not sure. 23 Q Okay. So if any of them were to 24 leave, there's a risk of a significant negative 25 impact on the fund strategy?</p>	<p style="text-align: right;">Page 427</p> <p>1 in the marketplace. 2 Q And does that relate to the same 3 concern regarding increase in size and execution 4 quality that you talked about before? 5 A Yes. 6 Q Okay. And that would also relate to 7 the fourth bullet point which is, "When one 8 other large individual floor pit trader was on 9 vacation, the futures fund percentage of pit 10 value nearly doubled"?</p> <p>11 A Correct. 12 Q Right? 13 Okay. So that just sort of -- when 14 the -- when the other guy is on vacation, this 15 concern is magnified? 16 A The concern is magnified, however, we 17 also noticed that, despite his absence, there 18 was no perceived difference in execution 19 quality. 20 Q Where does it say that? 21 A It doesn't say that here. That was my 22 recollection -- my recollection of that period 23 of time. 24 Q So you did an actual analysis of the 25 period of time that the other guy was on</p>

<p style="text-align: right;">Page 430</p> <p>1 vacation and physically analyzed the execution 2 quality and came to that conclusion? 3 A As I've testified previously, the 4 execution quality is not, to my knowledge, able 5 to be analyzed in a qualitative -- a 6 quantitative way., but I do recall hearing the 7 story that a large trader was on vacation and 8 thinking to myself, well, that's good because 9 I'm not noticing -- although our volume 10 percentage goes way up, I'm not noticing any 11 difference in execution quality.</p> <p>12 So that sticks in my mind because this 13 was an interesting story from the floor about 14 the large trader who's on vacation during that 15 time.</p> <p>16 Q Slide 9. Wait. Actually the next 17 slide says, "Current FCM status 3.1 billion?"</p> <p>18 Do you see that?</p> <p>19 A (No verbal response.)</p> <p>20 Q Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Okay. The last bullet point says, "In 23 April, with three billion in assets and FCM 24 capacity approximately, 1.9 billion, there were 25 trading constraint issues."</p>	<p style="text-align: right;">Page 432</p> <p>1 not telling the truth or you don't know? 2 A I don't know. 3 Q Okay. Sitting here today, you have no 4 reason to believe that she's making it up? 5 A I don't have any reason to believe 6 that she -- yeah, that she's making it up; no. 7 Q Okay. Does that seem like something 8 that she does, just that she doesn't research 9 things, just writes things out without checking, 10 just guesses? Is that her sort of work ethic?</p> <p>11 A No, not at all. However, this is, 12 again, a subjective issue.</p> <p>13 In other words, what does it -- what 14 does it mean to constrain trading?</p> <p>15 You know, so her perception may have 16 been that, oh, my gosh, we're so close to our 17 margin level that Ed can't trade.</p> <p>18 It's very likely that I reassured her 19 that was not the case. She may have had a 20 different opinion.</p> <p>21 I'm just speculating on what may have 22 occurred because I simply don't recall saying -- 23 in April saying, my gosh, I can't trade because 24 we don't have enough margins.</p> <p>25 Q Okay. Well, I didn't say that you</p>
<p style="text-align: right;">Page 431</p> <p>1 Do you see that?</p> <p>2 A I see that.</p> <p>3 Q Is that a true statement?</p> <p>4 A Again, I don't recall there to have 5 been constraints from -- from a margin 6 perspective. I think that's something would 7 stick in my mind. I simply don't recall that 8 being the case.</p> <p>9 Q Can you think of any reason why Ms. 10 Rios would write that if it wasn't true?</p> <p>11 A It -- it may have been her belief, but 12 I'm not sure where it came from.</p> <p>13 Q Where could it come from other than 14 you?</p> <p>15 A I don't know.</p> <p>16 Q Was anybody else doing the trading?</p> <p>17 A No.</p> <p>18 Q Who would know about trading 19 constraint issues if it wasn't you?</p> <p>20 A I guess that's my point. I'm -- I'm 21 confused by this bullet. I don't recall there 22 being trading constraints.</p> <p>23 Q Okay. If Ms. Rios testified that you 24 told her there were trading constraints in 25 April, are you -- is your position that she's</p>	<p style="text-align: right;">Page 433</p> <p>1 couldn't trade either. I just said that the 2 statement is there were trading constraints.</p> <p>3 A Right. And I don't recall what that 4 might be.</p> <p>5 Q If you go to -- there's a section that 6 says, "Items that could affect the fund?"</p> <p>7 And I apologize. The presentation 8 doesn't have numbers --</p> <p>9 A Sure.</p> <p>10 Q -- on them. But do you see what I'm 11 talking about?</p> <p>12 A Roughly -- okay. I got it, "Items 13 that could affect the fund."</p> <p>14 Q And so one of those items is an FCM 15 closing the fund's account. Reasons could be 16 lack of profitability, which I think you alluded 17 to is not doing enough volume for their --</p> <p>18 A Yes.</p> <p>19 Q -- needs?</p> <p>20 Or them not being comfortable with the 21 fund's risk limits?</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q What does that refer to?</p> <p>25 A I think that refers, generally</p>

<p>1 speaking, to -- to the -- that -- the item I 2 mentioned that -- that I know for sure we heard 3 from ABM, and that is -- well, I'm speculating. 4 Two things it could be, and that would be my 5 honest guess at this thing. 6 It could be options traders as a part 7 of an FCM portfolio. We've -- we've heard that 8 anecdotally, certainly, I do recall directly 9 from ADM. 10 And, secondarily, the risk limit, 11 meaning the collateral limit imposed upon us by 12 a particular FCM. 13 Q Okay. The first one you actually 14 remember ADM raising, correct? 15 A Yes. 16 Q The second one do you remember any 17 FCMs raising with you, or are you just 18 speculating on that? 19 A I'm speculating because that was a 20 common topic of discussion with FCMs about how 21 much collateral they were willing to -- 22 Q Okay. 23 A -- allow us -- 24 Q Common discussion of topics with you 25 relating to the futures fund?</p>	<p style="text-align: right;">Page 434</p> <p>1 fund faces many restrictions going forward, but 2 the primary items are FCM capacity and trading 3 volume." 4 Do you see that? 5 A Yes. 6 Q Do you agree -- as of May 2016, did 7 you agree with that statement? 8 A Yes. 9 Q And as of May 2016, is that something 10 that you had communicated to Mr. Szilagyi? 11 A Yes. 12 Q The second point is that as -- as of 13 May 2016, there is only a finite amount of money 14 that can be raised by wholesalers for the 15 futures fund where you can still execute the 16 strategy and produce the returns that you 17 intend, correct? 18 A Correct. 19 Q Is that a true statement as of May 20 2016? 21 A Yes. 22 Q And is that something that you had 23 communicated to Mr. Szilagyi? 24 A Yes. 25 Q Okay.</p>
<p>1 A Yes. 2 (Reporter clarification.) 3 BY MR. SCHMIDT: 4 Q Okay. So I was trying to determine 5 which of these issues were actually raised by 6 FCMs. The first one was raised by ADM, correct? 7 A Yes. 8 Q Okay. And the second one was raised 9 by multiple FCMs, is what it sounds like your 10 testimony is? 11 A Yes. And what I'm testifying is that 12 it was a common element of a discussion with an 13 FCM over our risk limit, which I'm speculating 14 might refer to our -- our discussion about 15 collateral and margin being provided to us. 16 Q So if you flip to the last page? 17 MR. ZILIAK: The last page of the 18 third presentation or the same presentation? 19 MR. SCHMIDT: The same presentation. 20 It's entitled "Summary." 21 THE WITNESS: I've got it. 22 BY MR. SCHMIDT: 23 Q Okay. So the first point in the 24 summary of this presentation on capacity of the 25 futures fund dated May 2016 is that "The future</p>	<p style="text-align: right;">Page 435</p> <p>1 Sure. 2 BY MR. WASSERMAN: 3 Q I believe you testified earlier that 4 there were occasions -- you recall occasions on 5 which J.J. told you that the other traders in 6 the pit were generally aware of your position; 7 is that correct? 8 A Yes. 9 Q When did he first tell you that? 10 A I don't know. 11 Q Do you recall whether it was before or 12 after this May -- May 2016 presentation? 13 A No. 14 Q At some point -- well, just going back 15 to the process by which you enter a trade, you 16 call J.J., right? 17 A Yes. 18 Q And J.J. sees what prices he can get 19 in the pit? 20 A Yes. 21 Q All right. Did there come a time when 22 the market started to respond to J.J. seeking 23 prices in the pit? 24 A He has mentioned that to me from time 25 to time that that occurs. I don't recall that</p>

<p>1 there was a particular beginning to it.</p> <p>2 Q In other words, when he would signal 3 that he was about to bid or offer on an option, 4 the market would move away from you, right?</p> <p>5 A Yes, sometimes he'd report that 6 happening, yes.</p> <p>7 Q And what was your understanding of why 8 that would happen?</p> <p>9 A Typically, my understanding, again, 10 from J.J., would be that the market would move 11 away to allow the -- whoever wanted to kind of 12 prehedge their trade so that, when we came in, 13 they'd already have bought or sold futures, 14 taken offsetting options position in 15 anticipation of them being able to come in and 16 fill the trade.</p> <p>17 So they were trying to -- to front run 18 a little bit, so to speak, so that they had a 19 better -- they had their risk covered before 20 they executed with us.</p> <p>21 Q Do you recall when you were first -- 22 when you first became aware of that happening?</p> <p>23 A No, I don't. That was a fairly 24 anecdotal conversation we had, as far as I can 25 remember, over the life of the fund.</p>	<p>Page 438</p> <p>1 adversely affect the prices you got?</p> <p>2 A Again, I testified that I noted no 3 consistent difference in execution quality.</p> <p>4 Q Well, to be clear, you testified that 5 with respect to the time period of 2014 to March 6 2016.</p> <p>7 I'm asking more generally now.</p> <p>8 When that happened, did it affect the 9 prices that you were able to get?</p> <p>10 A I'm not certain how that question is 11 different.</p> <p>12 Q Because it spans a longer period of 13 time. I suppose a different way to ask it would 14 be to say, okay, from March 2016 to December of 15 2016, your testimony is that, at some point, you 16 became aware of traders in the pit trying to 17 front run your trades, right?</p> <p>18 A Well, I had conversations with -- with 19 J.J. around how traders reacted to our trades 20 from time to time as normal.</p> <p>21 Q And more specifically, not how they 22 reacted to your trades, but how they reacted to 23 the prospect of you trading, right?</p> <p>24 A Yes. In other words, whether or not 25 he -- he actually quoted the price on the floor,</p>
<p>Page 439</p> <p>1 Q In -- in December of 2016, the fund 2 suffered a fairly substantial drawdown, correct?</p> <p>3 A Yes.</p> <p>4 Q Had -- were you aware of that 5 happening before the December drawdown?</p> <p>6 A I'm certain I had conversations with 7 J.J. regarding that before the drawdown. In 8 fact, specifically, as long as you asked, we had 9 conversations about whether that would actually 10 affect our pricing; in other words, the trader's 11 knowledge of our position.</p> <p>12 The first time, whenever that was, he 13 communicated that to me, I was concerned, and I 14 asked him whether he felt as though that would 15 provide adverse execution.</p> <p>16 He suggested -- I recall him 17 suggesting that, no, the particular strike 18 doesn't matter as much as the Greeks that can be 19 hedged away through other nearby strikes.</p> <p>20 Q I'm sorry. I don't -- I don't quite 21 follow.</p> <p>22 When this started to happen, 23 specifically the market moving away from you in 24 response to -- in anticipation of you trading, 25 when this began to happen, did it, in fact,</p>	<p>Page 441</p> <p>1 whether he called off the floor, whether we 2 looked at the minis or whatever, yeah.</p> <p>3 (Reporter clarification.)</p> <p>4 BY MR. WASSERMAN:</p> <p>5 Q So my question is -- my question is, 6 when you became aware of these circumstances, 7 did it affect the price that you were getting?</p> <p>8 A I don't believe so because I generally 9 didn't -- no. Short answer is no. I don't 10 think so.</p> <p>11 Q Why not?</p> <p>12 A Well, because you asked about the 13 process by which a trade is placed. There's an 14 important step in there. So I would -- I would 15 first establish what I consider to be a fair 16 price for the trade. I would ask J.J. for a 17 quote, and I would compare that quote to what I 18 saw on the electronic market.</p> <p>19 Obviously, the electronic market is 20 completely unaware of what's going on in the 21 pit. So that's how -- that's my basis for 22 determining whether or not I am getting a fair 23 price.</p> <p>24 So if I can't get a fair price, I 25 don't execute the trade.</p>

<p style="text-align: right;">Page 442</p> <p>1 Q So were there times when you -- when 2 you didn't feel -- when you felt like you were 3 not getting a fair price?</p> <p>4 A There were times when the pricing 5 wasn't suitable for me to enter the trade, so I 6 didn't.</p> <p>7 Q Well, there were times when the price 8 that J.J. was reporting back to you was 9 different than the price you were seeing on the 10 screen?</p> <p>11 A Well, the price I'm seeing on the 12 screen is bid offer. So it's always -- back to 13 our earlier --</p> <p>14 Q All right. Let me rephrase the 15 question?</p> <p>16 A Yeah.</p> <p>17 Q Were there times when the spread you 18 were getting from J.J. was wider than the spread 19 you were seeing on the screen?</p> <p>20 A That was very rare just because of the 21 increments that the contracts traded.</p> <p>22 Q Do you recall generally from March of 23 2016 to December of 2016 the spreads that J.J. 24 was reporting back to you getting wider?</p> <p>25 A No. That -- that goes to my previous</p>	<p style="text-align: right;">Page 444</p> <p>1 you got, increase over time?</p> <p>2 A No, and that goes back to my testimony 3 about execution quality. That's one of the 4 things I would monitor and I noticed no 5 BY MR. SCHMIDT:</p> <p>6 Q Your asking J.J. for a quote, is that 7 over the phone or via e-mail?</p> <p>8 A Over the phone most of the time.</p> <p>9 Q Okay. And when he gives a quote back 10 to you, is it over the phone or e-mail?</p> <p>11 A Phone most of the time.</p> <p>12 Q Okay. And when you finally decide to 13 either execute or pass on a trade, is that on 14 the phone or e-mail?</p> <p>15 A Again, phone most of the time.</p> <p>16 Q Okay. I'll show you what's been 17 marked as Exhibit 146.</p> <p>18 (SEC Exhibit No. 146 was 19 marked for identification.)</p> <p>20 BY MR. SCHMIDT:</p> <p>21 Q For the record, it's an e-mail June 22 29th, 2016, from Ms. Rios to you entitled "FCM 23 capacity."</p> <p>24 Do you recognize this document?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 443</p> <p>1 testimony around execution quality. There was 2 no consistent difference. There were days when 3 spreads were wide. There were days when spreads 4 were narrow. And that's likely basis normal 5 market functioning around which participants 6 were interested on a particular day, in fact, 7 which participants were able to use other S&P 8 instruments to hedge and who was in the market 9 on that given day.</p> <p>10 So all the -- all the variables that 11 go into an auction market were present on any 12 given day.</p> <p>13 Q Were there times when the prices you 14 got back from J.J. were not, in your view, fair 15 market prices and, therefore, you waited to 16 trade?</p> <p>17 A Sure. There were times when he would 18 give me a quote that I was unwilling to -- to 19 trade.</p> <p>20 Typically I would leave a limit in 21 place and normal market movement would give me 22 my price. So that's another variable that's in 23 there as well.</p> <p>24 Q Did the frequency in which you decided 25 to wait, instead of acting on the first price</p>	<p style="text-align: right;">Page 445</p> <p>1 Q Okay. Can you -- did you ask Ms. Rios 2 to run estimates on margin-to-NAV ratio in or 3 about June of 2016?</p> <p>4 A I don't recall whether I asked her to 5 or whether she did it on her own.</p> <p>6 Q Okay. What do these charts tell you?</p> <p>7 A They are generally telling me that, if 8 we project forward six months into the future, 9 we will have a decrease of margin capacity as a 10 fund -- as a percentage of the fund's AUM under 11 the assumption of certain growth rates in the 12 fund.</p> <p>13 Q Okay. And is that a concern?</p> <p>14 A Yes. We -- as I've testified 15 previously, we were monitoring our FCM capacity 16 very carefully.</p> <p>17 Q And I understand that. I'm just 18 asking why is a decrease margin-to-NAV max ratio 19 a concern? Just explain it to me.</p> <p>20 A Because, if we don't have a sufficient 21 margin capacity to clear our portfolio, then we 22 can't trade.</p> <p>23 Q Okay. Do you remember in mid-2016 24 regular reports like this about current capacity 25 at FCMs compared to AUM?</p>

<p style="text-align: right;">Page 446</p> <p>1 A I don't remember regular reports like 2 this. We -- we did track, for lots of different 3 reasons, our margin capacity and our trading 4 volume of FCMs.</p> <p>5 Q So I think you had mentioned 6 previously this was a concern that you had as a 7 potential risk way back in fall of 2014. It's 8 obviously continuing through the summer of 2016. 9 Is that fair?</p> <p>10 A Yes.</p> <p>11 QOkay. I show you what's been 12 marked -- this is Exhibit 117.</p> <p>13 (SEC Exhibit No. 117 was 14 marked for identification.)</p> <p>15 BY MR. SCHMIDT:</p> <p>16 Q This is a July 22nd, 2016 e-mail to 17 you from a guy named Mike Zufall, Z-u-f-a-l-l, 18 and Kim Rios. It's from a guy named Larry 19 Milder, M-i-l-d-e-r.</p> <p>20 A It's actually Milder.</p> <p>21 Q Thank you for the correction?</p> <p>22 A Should you ever meet him.</p> <p>23 Q Okay. And really my only question is: 24 Your e-mail that's the second one on this page, 25 do you see it?</p>	<p style="text-align: right;">Page 448</p> <p>1 see in this capacity constraint is, we have 2 sufficient asset growth. There's no need for me 3 to be spending effort against additional growth.</p> <p>4 Q If you look back on Exhibit 34, one of 5 the capacity analyses is dated August 2016; is 6 that correct? One of the attachments?</p> <p>7 MR. BENSON: In case it helps, Mr. 8 Walczak, it's actually the second presentation. 9 It's attached to the cover page. And it 10 incorrectly says "May 2016" on the cover page. 11 But if you look at the data -- well, if you 12 look -- if you look at the cover e-mail of 13 Exhibit 34, the file name is HFXAX capacity 14 analysis-8-2016, that PDF.</p> <p>15 And if you read the content of that 16 presentation that includes the May 2016 date, 17 you'll see that it references information that 18 is past May 2016.</p> <p>19 MR. BYLINA: So the second 20 presentation should read August 2016. Instead 21 it says May. So it looks like a duplicate on 22 its face.</p> <p>23 THE WITNESS: That's the phrase. 24 MR. BENSON: That's right. That's 25 what I like to say. That's right.</p>
<p style="text-align: right;">Page 447</p> <p>1 A Yes.</p> <p>2 Q Okay. What you say is, as of July 3 22nd, 2016, you are certainly not interested in 4 encouraging additional AUM growth.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Why are you not interested in that?</p> <p>8 A Well, my -- the point of this e-mail, 9 as you see from the first part of the statement, 10 what would be the goal of my portion of the 11 call, is that I was not interested in talking to 12 the sales force because that's not something 13 that I felt was the most value at -- of my time.</p> <p>14 And my rational in the second sentence 15 was to say: Look, why am I spending time 16 talking to the sales force? We have plenty of 17 AUM growth. Don't need to encourage more. So 18 that's the context behind my statement.</p> <p>19 Q Okay. So is it your testimony that 20 you're happy with the AUM growth, there's no 21 issue with it, and that's the only reason you 22 don't want to be on the call, and it's not that 23 you would rather have AUM growth slow down at 24 this point?</p> <p>25 A Well, no. The real answer is, as we</p>	<p style="text-align: right;">Page 449</p> <p>1 THE WITNESS: All right. Given that, 2 I'm at the title page that says May 2016 but 3 doesn't mean it.</p> <p>4 MR. BENSON: Great.</p> <p>5 BY MR. SCHMIDT:</p> <p>6 Q So let me -- just to give you a frame 7 of reference, let me show you Exhibit 116.</p> <p>8 (SEC Exhibit No. 116 was 9 marked for identification.)</p> <p>10 BY MR. SCHMIDT:</p> <p>11 Q And this references a formal call that 12 occurred in August 2016 regarding the capacity 13 issue.</p> <p>14 For the record, it's an August 5, 15 2016, e-mail. The importance is indicated as 16 high. The subject is "capacity phone call next 17 week and updates." It's sent by Kim Rios, and 18 the recipients are you, Mr. Amhrein, 19 A-m-r-h-e-i-n, Mr. Szilagyi.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Okay. Do you remember this call in 23 August 2016 about capacity?</p> <p>24 A I don't remember it specifically, no. 25 I'm sure it took place.</p>

<p>1 I don't remember specific details from 2 that time.</p> <p>3 Q Okay. Do you remember anything that 4 was said on the call?</p> <p>5 A No.</p> <p>6 Q Do you remember any decisions that 7 were made?</p> <p>8 A August 2016? No, I don't. I think it 9 would be unlikely there were decisions that were 10 made on that call. That wasn't what usually 11 happens, but I don't recall any.</p> <p>12 Q As you look at these volume numbers 13 that are here in the e-mail --</p> <p>14 A Yes.</p> <p>15 Q -- does that refresh your memory as to 16 whether those volume numbers were discussed with 17 the Catalyst folks in New York, specifically Mr. 18 Amhrein and Mr. Szilagyi?</p> <p>19 A I don't remember, but I would say it's 20 likely that these items were discussed on the 21 call.</p> <p>22 Q Okay. Do you remember we looked at a 23 presentation when Ms. Rios said that there were 24 trading constraints in April of 2017?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 450</p> <p>1 Q Anything else? 2 A Those are the three I remember. 3 Q And those relate to the risk 4 parameters that we reviewed yesterday on that 5 daily report that's generated? 6 A Yes. 7 Q That's what you're referring to? 8 A That's correct. 9 Q Okay. Call position size, call open 10 option premium and max margin? 11 A Yes. 12 Q Okay. 13 A By the way, those -- those adjustments 14 were made in response to a -- to risk metric 15 triggers, I believe, in July. They were not 16 done with any consideration of capacity. 17 Q Okay? 18 BY MR. BENSON: 19 Q So did the call go forward on Monday, 20 August 7th or 8th, 2016, as contemplated on 21 Exhibit 116? 22 A I'm certain we had the discussion. 23 Whether the schedule was adjusted, I don't know. 24 Q Okay. But the call did go forward, 25 correct?</p>
<p style="text-align: right;">Page 451</p> <p>1 Q Okay. Do you see here where she says 2 in this e-mail that the volume in April was over 3 30 percent?</p> <p>4 A Yes.</p> <p>5 Q Does that refresh your recollection as 6 to whether the high pit volume in April caused 7 any trading constraints?</p> <p>8 A No, it doesn't. But I'll remind you 9 that April was also the month in which, 10 apparently, a large trader was absent from the 11 pit so that our percentage was up on -- on that 12 basis.</p> <p>13 Q Okay. This e-mail says that risk 14 measures have been adjusted to help deter some 15 of these issues in the future.</p> <p>16 Do you see that down at the bottom 17 "additional items"?</p> <p>18 A Yes. I see that.</p> <p>19 Q What adjustments did you make to risk 20 measures in the summer or August of 2016?</p> <p>21 A We -- in the summer of 2016, we -- 22 best I can recall, we took call position size 23 limits. We lowered those. We lowered our call 24 open option premium numbers, and I believe we 25 also reduced our maximum margin numbers.</p>	<p style="text-align: right;">Page 453</p> <p>1 A At some point, roughly at this time, 2 for sure.</p> <p>3 Q Okay. And who participated in it?</p> <p>4 A I don't remember that.</p> <p>5 Q Okay. Jerry Szilagyi participated, 6 right?</p> <p>7 A For sure he was on the call.</p> <p>8 Q Okay. And do you recall whether 9 anyone discussed any of the capacity analysis 10 presentations that's been marked as Exhibit 34 11 during that -- during that call?</p> <p>12 A I believe the -- how to say it?</p> <p>13 The -- the agenda, the meeting was, in fact, to 14 walk through this deck.</p> <p>15 Q Okay.</p> <p>16 A That's -- I'm pretty sure that's what 17 occurred.</p> <p>18 Q Okay. And was there a decision made 19 at the end of the call?</p> <p>20 A I'm -- I'm very confident there -- 21 well, I don't think so.</p> <p>22 I don't remember for sure, but it was 23 not a typical behavior of Mr. Szilagyi to make a 24 decision at the end of a phone call like this.</p> <p>25 Q Okay. Were any of the members of the</p>

<p style="text-align: right;">Page 454</p> <p>1 board of trustees of the Mutual Fund Series 2 Trust invited to participate in that call? 3 A No. 4 Q Okay. I believe yesterday you 5 discussed how you have attended two meetings of 6 the board of trustees of Mutual Fund Series 7 Trust in person? 8 A Yes. 9 Q You participated in one telephone call 10 with the full board of trustees? 11 A Yes. 12 Q And then you participated in one call 13 with a portion of the board of trustees, 14 correct? 15 A Yes. 16 Q During any of those in-person or 17 telephonic meetings, have you ever discussed 18 capacity constraints -- you yourself discussed 19 capacity constraints with any of the board of 20 trustees? 21 A I don't recall doing that, no. 22 Q Okay. Do you know whether Mr. 23 Szilagyi, as a member of the board of trustees, 24 has shared information relating to capacity 25 constraints with his fellow board members?</p>	<p style="text-align: right;">Page 456</p> <p>1 of occasions; at least two times in 2 presentations and then other times through 3 e-mails, right? 4 A Yes. We had planning sessions. 5 Again, forward looking. The purpose of the 6 meeting, again, to be clear, was not to say we 7 are in trouble. It was to say, let's look 8 forward so that we don't get in trouble without 9 realizing it and without being able to plan for 10 it. 11 Q Hey, guys, this is a potential risk we 12 should be aware of. Let's make sure that we're 13 managing to avoid any calamities? 14 A Yes. That's correct. 15 Q Okay. And during -- so how many 16 conversations and e-mails do you think you 17 exchanged with Mr. Szilagyi on this issue of 18 capacity? 19 A I have no idea. 20 Q More than two? 21 A I don't recall how many times I might 22 have e-mailed him on it. Certainly more than 23 twice that I talked to him about it, sure. 24 Q Well, I think we have looked at at 25 least two e-mails. I mean --</p>
<p style="text-align: right;">Page 455</p> <p>1 A I don't know. 2 Q Have you ever asked him? 3 A No. 4 Q So as of August 2016, there's been two 5 analyses or two presentations circulated to Mr. 6 Szilagyi regarding capacity constraints, right? 7 A Yes. 8 Q Okay. And who's the ultimate decision 9 maker, in your view, at Catalyst Capital 10 Advisors? 11 A Mr. Szilagyi. 12 Q Mr. Szilagyi. 13 So in your -- in your mind, if you 14 wanted to bring an issue to someone at Catalyst 15 who could make a decision or make a change, it 16 would be Mr. Szilagyi, right? 17 A Yes. 18 Q Okay. And you actually -- you did 19 that? Well, either you or Ms. -- Ms. Rios did 20 that, right? 21 A Yes. 22 Q With regard to the capacity issues? 23 A Yes. 24 Q Okay. And you did it not -- not once, 25 but by August 2016, you had done it on a number</p>	<p style="text-align: right;">Page 457</p> <p>1 A Sure. 2 Q -- is it fair to say that you -- this 3 was a persistent topic of conversation over many 4 years, right? 5 A Yes. I've testified that it was not 6 frequent but fairly regular. 7 Q Okay. And did you ever ask Mr. 8 Szilagyi whether this is something that needed 9 to be disclosed to investors in the futures fund 10 in, for instance, the prospectus? 11 A No, I did not. 12 Q In -- in any written form? 13 A No, I did not. 14 Q And he never asked you whether, in 15 your view, this is a risk that needed to be 16 disclosed to investors, right? 17 A He didn't ask me about disclosures, 18 no. 19 Q You never talked to Mr. Szilagyi about 20 what needed to be disclosed and what didn't need 21 to be disclosed to investors, right? 22 A More recently I've had some 23 discussions with him about certain attributes of 24 risk management and trading, yes. 25 Q And when did those discussions begin?</p>

<p style="text-align: right;">Page 458</p> <p>1 A Maybe in October, November of last 2 year. 3 Q So October or November of 2017, right? 4 A Correct. 5 Q And, ultimately, you're not an 6 employee of Catalyst Capital Advisors, right? 7 A As I understand the word, I'm not. 8 Q Do you believe that, as an independent 9 contractor, an individual who has a contractual 10 relationship with Catalyst Capital Advisors, you 11 have the authority to dictate how Catalyst makes 12 disclosures to investors? 13 A No. 14 Q Okay. And you've never demanded or 15 requested that a disclosure be made by Catalyst 16 one way or the other, right? 17 A That's correct, I have not. 18 Q Okay. And you've never looked at a 19 disclosure that Catalyst did make and say, I 20 disagree; take that disclosure out, right? 21 A No. 22 Q Okay. So did you -- did you create -- 23 what was your role in creating the August 24 version of the May 2016 capacity presentation? 25 A I certainly reviewed it. I may have</p>	<p style="text-align: right;">Page 460</p> <p>1 Understood now. Thank you very much. 2 MR. BENSON: Okay. 3 BY MR. BENSON: 4 Q And your answers that you just gave, 5 they would be the same for the May 2016 6 presentation too, right? 7 A Yes. 8 Q Okay. And these were presentations 9 that you didn't spend five minutes on and say, 10 "Looks good." 11 You spent some time to make sure that 12 you were comfortable with the content, right? 13 A I did review them. I can't tell you 14 that I studied them. It's an internal meeting. 15 It's sufficient. In other words, I didn't 16 wordsmith it. 17 Q Uh-huh. 18 A I didn't argue with some of the 19 subjective points that Ms. Rios felt were 20 important. 21 I felt it was important to let her 22 speak her mind. 23 So did I review those in the same way 24 as I would prospectus, for example? No. 25 Q But you didn't, for instance, say,</p>
<p style="text-align: right;">Page 459</p> <p>1 written parts of it. Again, Ms. Rios and I 2 collaborated. So it's not -- it's not crystal 3 clear in my mind how much I wrote, how much I 4 edited, et cetera. So this was a combination 5 document. 6 Q It was a document that was important, 7 in your view, that it be accurate and factually 8 correct, right? 9 A Yes. 10 Q Okay. And you wanted it to present an 11 accurate reflection of the -- of the situation 12 facing -- facing the futures fund in terms of 13 capacity, right? 14 A Yes. 15 MR. ZILIAK: I apologize. I'm a 16 little confused. You said the August version of 17 the May presentation? Which -- which document 18 are you referring to here, please? 19 MR. BENSON: That is the second 20 presentation that's attached as an exhibit -- as 21 an -- 22 MR. ZILIAK: Okay. 23 MR. BENSON: -- attachment to the 24 cover e-mail of Exhibit 34. 25 MR. ZILIAK: All right. Okay.</p>	<p style="text-align: right;">Page 461</p> <p>1 "This is wrong. It cannot go to Mr. Szilagyi," 2 right? 3 A Right. I didn't see anything in there 4 that -- in -- in this presentation that -- that 5 I would have said, "No, let's not bring that 6 up." 7 Q So at the time, it was accurate? 8 A Well, it was certainly reasonable to 9 have as a discussion point. 10 Q I'm not sure that answers my question. 11 A So some -- some of these statements 12 are -- are -- reflect opinions. 13 Q Okay. 14 A And -- and so the meaning of my 15 testimony was to suggest that nothing in here 16 did I feel was inappropriate to express as a 17 part of the discussion about capacity. 18 MR. BENSON: The end -- 19 MR. SHANK: Is there anything in there 20 that you disagree with, even if you thought it 21 was appropriate for discussion? 22 THE WITNESS: As I sit here today, 23 I've already testified that some of Ms. Rios's 24 comments about capacity constraining trading, 25 I'm not fully aware of what she meant. So my</p>

<p style="text-align: right;">Page 462</p> <p>1 recollection is that I was not constrained in 2 that manner; so whether that's incorrect or a 3 difference of opinion, I can't say.</p> <p>4 1 BY MR. BENSON:</p> <p>5 Q Yeah. I think what I'm getting at is 6 there was nothing in either the May 2016 or 7 August 2016 presentation that had a statement 8 that was objectively unreasonable, right?</p> <p>9 A Well, again, to my previous testimony, 10 I have said that I did not believe there were 11 constraints in trading, for example, in April. 12 That's when I remember.</p> <p>13 But if I was -- I didn't object to her 14 bringing that up.</p> <p>15 I don't remember it being brought up 16 actually, but I didn't object to it.</p> <p>17 Q Okay. And not to belabor this. So 18 you remember having a conversation via telephone 19 where at least you, Ms. Rios, and Mr. Szilagyi 20 walked through the presentation deck, right?</p> <p>21 A Yes.</p> <p>22 Q Did Mr. Szilagyi ask you any 23 questions?</p> <p>24 A I'm certain he did. I don't recall 25 what specifically he asked.</p>	<p style="text-align: right;">Page 464</p> <p>1 BY MR. BENSON: 2 Q The final bullet point says, 3 "Measurable impact notwithstanding, we are 4 uncomfortable with volume share consistently 5 above 30 percent." 6 Do you know who the "we" in that 7 sentence is? 8 A It's a -- probably a Royal pronoun, 9 meaning me. 10 Q Okay. Meaning the folks in Wisconsin? 11 A Yes. 12 Q Right? 13 A The -- the team managing the futures 14 fund. 15 Q And, again, I just want to be clear 16 that I understand, Mr. Walczak. This is a 17 presentation that the team in Wisconsin created 18 to inform the folks at Catalyst in New York, 19 right? 20 A That's correct. 21 Q Okay. And did you at the time, August 22 2016, believe that the statement, "We are 23 uncomfortable with volume share consistently 24 above 30 percent" -- did you share that opinion? 25 A Yes. And -- and to -- to recall, I've</p>
<p style="text-align: right;">Page 463</p> <p>1 Q At the end of the conversation, did 2 you feel that you had fully apprised him of the 3 concerns or at least the issues surrounding, you 4 know, capacity risk related to the futures fund? 5 A Yes, I did.</p> <p>6 Q Okay. And you didn't feel that you 7 had provided him with only half of the 8 information that he needed; you had provided him 9 with all the information he needed to proceed 10 however he chose?</p> <p>11 A Yes.</p> <p>12 Q Okay. There's a couple questions I 13 have on the actual presentation.</p> <p>14 So if you turn to the third page of 15 the August 2016 presentation. Which is 16 identified as the May 2016 presentation. So the 17 second May 2016 presentation in Exhibit 34.</p> <p>18 A What's -- what's the title?</p> <p>19 Q The third slide is, "HFXAX capacity as 20 constrained by two factors?"</p> <p>21 MR. ZILIAK: Sir, there are multiple 22 slides with that title. What's the subhead, 23 please?</p> <p>24 MR. BENSON: It's "execution quality."</p> <p>25 MR. ZILIAK: Great. Thank you.</p>	<p style="text-align: right;">Page 465</p> <p>1 testified on that yesterday actually, that we 2 monitored exchange volume percentages. There 3 was no hard-and-fast ceiling other than a 4 general judgment that volume share consistently 5 among 30 percent just seemed too large.</p> <p>6 Q Okay. And you communicated that to 7 Mr. Szilagyi, right?</p> <p>8 A Yes. It was -- it was a basic 9 assumption in the analysis to say we can't tell 10 you that it's not possible to go to 60 or 70, 11 but we want to set that ceiling at 30 because we 12 think that's a reasonable level, especially for 13 purposes of this analysis.</p> <p>14 Q And did Mr. Szilagyi have a reaction 15 to that point?</p> <p>16 A I don't recall that he -- again, I 17 don't recall specifics, other than I certainly 18 don't recall he disagreed with it.</p> <p>19 Q Okay. It's reasonable to assume that 20 he's in a position to defer to your judgment and 21 experience, correct?</p> <p>22 A Yes.</p> <p>23 Q You're the person who's closest to the 24 fund. You're the person who's actually trading 25 the fund, right?</p>

<p style="text-align: right;">Page 466</p> <p>1 A Yes.</p> <p>2 Q He doesn't make any trading decisions 3 for the futures fund as of August 2016, right?</p> <p>4 A Correct.</p> <p>5 Q He's not reviewing the daily trade 6 blotter, for instance, right?</p> <p>7 A That I don't know.</p> <p>8 Q Okay. Did he --</p> <p>9 A It wouldn't surprise --</p> <p>10 Q -- have access to it?</p> <p>11 A Sure.</p> <p>12 Q Oh, he does. Okay. Okay.</p> <p>13 A Yeah.</p> <p>14 Q If you turn to the next page, which 15 has the heading "HFXAX capacity as constrained 16 by two factors," and the subheading is "Clearing 17 broker, open paren, FCM, close paren, collateral 18 restrictions?"</p> <p>19 The final two bullet points say -- the 20 first one -- the second to the last says, In 21 some cases, our trading activity does not 22 satisfy FCM internal profitability metrics, open 23 paren, ROC, close paren. In May, one of our 24 FCMs closed our account for this reason.</p> <p>25 Why -- was it significant that one of</p>	<p style="text-align: right;">Page 468</p> <p>1 A In an individual capacity, no.</p> <p>2 It -- it may have been me and/or 3 Kimberly signing on behalf of Catalyst, which 4 may or may not have been correct.</p> <p>5 But there were -- there were certain 6 documents, and I think it may have even depended 7 on internal FCM requirements --</p> <p>8 Q Uh-huh.</p> <p>9 A -- certain documents Mr. Szilagyi 10 signed. But it didn't -- my recollection is it 11 was -- it wasn't always consistent.</p> <p>12 Q An FCM, in order to enter into a 13 contract, would require some financial 14 information about their client, right?</p> <p>15 A That's not atypical. But I can't 16 comment on how we chose the client.</p> <p>17 (Reporter clarification.)</p> <p>18 BY MR. BENSON:</p> <p>19 Q So it's common for an FCM to seek 20 financial information about their client?</p> <p>21 A In my experience, yeah, I would say 22 it's common.</p> <p>23 Q Okay. And why -- why would that be 24 common?</p> <p>25 A They want to understand whether or not</p>
<p style="text-align: right;">Page 467</p> <p>1 the FCMs closed the account?</p> <p>2 A Well, it was significantly certainly 3 to our capacity analysis because that reduced 4 our FCM capacity, yes.</p> <p>5 Q And at this time, August 2016, you're 6 trying to increase the number of FCMs, not 7 decrease the number of FCMs, correct?</p> <p>8 A Right. Actual capacity could be a 9 number. It could be the capacity to each 10 individual. But that's correct, yes.</p> <p>11 Q Okay. One point that I don't know if 12 we have clarified, and I apologize. I had to 13 step out so you might have touched on it.</p> <p>14 Do you know who entered into the 15 contract with the FCMs?</p> <p>16 Was it Catalyst Capital Advisors?</p> <p>17 Was it Ed Walczak?</p> <p>18 Was it Kim Rios?</p> <p>19 Was it Harbor Financial, L.L.C.?</p> <p>20 Who were the parties to the contract, 21 do you know?</p> <p>22 A I know for certain it was not Harbor 23 Financial, L.L.C.</p> <p>24 Q Okay. I assume you also know it was 25 not you in an individual capacity?</p>	<p style="text-align: right;">Page 469</p> <p>1 their client is financially sound to support 2 their trading activity.</p> <p>3 Q Okay. And then just the last bullet 4 point in the slide says, "Based on low 5 profitability, we operate under a, 'cap charge,' 6 system at two of our FCMs. Depending on terms, 7 this can roughly double transaction costs."</p> <p>8 Do you believe that that conclusion 9 that the cap charge can, quote, roughly double 10 transaction costs, was accurate as of August 11 2016?</p> <p>12 A It -- it was accurate in terms of 13 "roughly"; and depending on "terms," it could 14 double transaction costs at a particular FCM.</p> <p>15 Q Okay. Okay. I think that's all I've 16 got on this. Let me make sure.</p> <p>17 BY MR. SCHMIDT: Who's the FCM that 18 terminated or otherwise got out of the agreement 19 with Catalyst in mid-2016?</p> <p>20 THE WITNESS: I don't recall which one 21 it was.</p> <p>22 BY MR. BENSON:</p> <p>23 Q It was Mizuho, right?</p> <p>24 A That's possible. They came back. So 25 I think that is correct, actually.</p>

<p>1 Q And actually we'll kind of cut to the 2 chase.</p> <p>3 In October of 2016, another FCM 4 terminates its relationship with Catalyst, 5 right?</p> <p>6 A I believe Gain Capital as a result of 7 being acquired.</p> <p>8 Q Wasn't it Morgan Stanley? We can look 9 at the documents.</p> <p>10 A No. I think -- no. Gain is the one I 11 remember -- the other one I remember terminating 12 the relationship based on an acquisition. But, 13 yeah, that's what I remember.</p> <p>14 Q And I guess just one last question: 15 When you were going over Exhibit 116 with Jake, 16 you talked about affirmative steps that you and 17 Ms. Rios had taken in light of the capacity 18 concerns, right?</p> <p>19 A I don't recall further steps.</p> <p>20 Q To reduce risk.</p> <p>21 MR. SCHMIDT: I believe you modified 22 certain risk metrics, is what you testified to.</p> <p>23 THE WITNESS: Yes. And in my 24 testimony, I mentioned that was not based on 25 capacity considerations. That was based on the</p>	<p>Page 470</p> <p>1 Q Do you recall general discussions on 2 it?</p> <p>3 A No.</p> <p>4 Q You don't recall any discussions about 5 how the size of the fund's positions could 6 affect its ability to get out of them?</p> <p>7 A No.</p> <p>8 BY MR. BENSON:</p> <p>9 Q So just before we close out the August 10 2016 presentation, the penultimate slide, the 11 second to the last slide, it says, "Our size and 12 capacity analysis have surfaced other important 13 issues."</p> <p>14 And there are five bullet points on 15 that slide. They are increased regulatory and 16 exchange scrutiny.</p> <p>17 A Hold on. I haven't caught up to you 18 yet. Where are we?</p> <p>19 Q This is the second to the last slide 20 of the --</p> <p>21 A Yeah. But there's a whole --</p> <p>22 MR. SCHMIDT: No, the middle 23 presentation.</p> <p>24 THE WITNESS: The middle presentation? 25 MR. SCHMIDT: Yeah.</p>
<p>Page 471</p> <p>1 drawdown we had and reevaluation of those risk 2 metrics post -- no. I'm sorry. We triggered 3 risk. And as a result of that risk trigger, 4 we -- we evaluated our -- our metrics and chose 5 to reduce some of them.</p> <p>6 BY MR. BENSON:</p> <p>7 Q Okay. So I misunderstood you.</p> <p>8 So as of August 2016, you had not 9 taken any affirmative steps in terms of either 10 changing the way that you put on trades, put off 11 trades, entered or exited positions or monitored 12 risk based on the capacity analyses that you had 13 done. Is that a fair statement?</p> <p>14 A Yeah, it is. That's -- that's my 15 recollection. I don't recall making any changes 16 to trading.</p> <p>17 MR. BENSON: Okay.</p> <p>18 BY MR. WASSERMAN:</p> <p>19 Q Do you recall having any -- do you 20 recall having any discussions with anyone about 21 how the funds -- the size of the fund's position 22 could affect its ability to get out of those 23 positions?</p> <p>24 A I don't recall specific discussions on 25 that, no.</p>	<p>Page 473</p> <p>1 THE WITNESS: Okay.</p> <p>2 BY MR. BENSON:</p> <p>3 Q It looks like this.</p> <p>4 A I have it.</p> <p>5 Q Okay. So that -- that document is 6 entitled "Our size and capacity analysis has 7 surfaced other important issues," correct?</p> <p>8 A Yes.</p> <p>9 Q So the first is "increased regulatory 10 and exchange security?"</p> <p>11 What was meant by that?</p> <p>12 A I think it was meant that the larger 13 we get, the more a regulator like yourself or an 14 exchange might pay attention.</p> <p>15 Q Because you have the -- such a large 16 volume that you are potentially putting the 17 trading of that -- of those products at issue. 18 You have the ability to possibly move the market 19 based on your position; is that fair to say?</p> <p>20 A I have -- I have no idea why it would 21 be other than it seemed to make sense to us that 22 size would attract attention.</p> <p>23 Q Okay. And then we talked about 24 increasing cost of FMC capacity due to 25 profitability requirement. That was the cap</p>

<p>1 charges we talked about earlier, right?</p> <p>2 A Yes.</p> <p>3 Q "Decreasing effectiveness of FCM</p> <p>4 capacity due to more restrictive risk metrics,"</p> <p>5 what does that mean?</p> <p>6 A I'm not sure. I'm happy to think</p> <p>7 about it for a moment.</p> <p>8 Q Well, I'll give you an idea. Is it --</p> <p>9 it is -- essentially was there concerns that</p> <p>10 FCMs -- they don't want to be concentrated in a</p> <p>11 few large clients because it actually increases</p> <p>12 their own risk?</p> <p>13 A No. I believe what it means is</p> <p>14 restrictive risk metrics is on the FCM side. So</p> <p>15 that's one of the reasons why an FCM might put a</p> <p>16 multiple on top of span margin.</p> <p>17 So we did run into some issue. I</p> <p>18 think there was a bullet point, for example,</p> <p>19 when an FCM suddenly decided after a review of</p> <p>20 their portfolio, that futures fund or an option</p> <p>21 trader, we're charging them an exchange minimum</p> <p>22 margin. Let's charge them 1.5 to protect</p> <p>23 ourselves. Let's have more collateral on hand.</p> <p>24 So this is what that refers to. When</p> <p>25 an FCM suddenly decides to do that, that's what</p>	<p>Page 474</p> <p>1 A Yes.</p> <p>2 Q Okay. And then the final bullet point</p> <p>3 is, "There's a risk that pit trading in our</p> <p>4 market is discontinued within the time frame of</p> <p>5 this analysis."</p> <p>6 What did you mean by that?</p> <p>7 A Wait. Maybe I'm on the wrong page.</p> <p>8 Q The fifth bullet point says, "There is</p> <p>9 a risk that pit trading in our market is</p> <p>10 discontinued within the time frame of this</p> <p>11 analysis."</p> <p>12 A Is that the right page?</p> <p>13 MR. ZILIAK: Hold on. No.</p> <p>14 THE WITNESS: No.</p> <p>15 MR. ZILIAK: How weird how they do</p> <p>16 this presentation. Let's see. So I was trying</p> <p>17 to figure out what he is looking at.</p> <p>18 MR. BENSON: November. He's looking</p> <p>19 at the November 1?</p> <p>20 MR. ZILIAK: Yes.</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. ZILIAK: So sorry. You are</p> <p>23 looking at this slide, please.</p> <p>24 THE WITNESS: Okay.</p> <p>25 BY MR. BENSON:</p>
<p>Page 475</p> <p>1 it means, decreasing effectiveness, essentially</p> <p>2 reducing capacity.</p> <p>3 Q Right. And they would do as a</p> <p>4 defensive measure to protect -- the FMC would do</p> <p>5 that as a defensive measure to protect</p> <p>6 themselves?</p> <p>7 A Yes. And in this case, that's exactly</p> <p>8 what is restrictive risk metrics. In some</p> <p>9 cases, they would do it for other reasons, but</p> <p>10 that's a risk.</p> <p>11 Q And then you -- the fourth bullet</p> <p>12 point is, "The degree of participation on a</p> <p>13 daily basis of a few specific large</p> <p>14 counterparties has a material impact on</p> <p>15 execution quality," right?</p> <p>16 A (Nodding head.)</p> <p>17 Q And that happened -- an example of</p> <p>18 that would be that a market -- there might be</p> <p>19 four or five market makers at a given time. But</p> <p>20 on certain days, only three or four of those</p> <p>21 five market makers would actually be available;</p> <p>22 is that right?</p> <p>23 A Yes.</p> <p>24 Q Okay. So the availability of</p> <p>25 counterparties is reduced?</p>	<p>Page 477</p> <p>1 Q So you're looking at the right slide</p> <p>2 now. The first four bullet points, you agree,</p> <p>3 are -- that we just went over are reflected on</p> <p>4 that slide, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. The fifth bullet point is,</p> <p>7 "There's a risk that pit trading in our market</p> <p>8 is discontinued within the time frame of this</p> <p>9 analysis."</p> <p>10 Is that just a recognition that</p> <p>11 trading is moving on to the electronic</p> <p>12 platforms?</p> <p>13 A Sure.</p> <p>14 Q Okay. And why would that create --</p> <p>15 why is that -- why is that a risk?</p> <p>16 A Well, it's a risk in the context of a</p> <p>17 capacity discussion because the alternative to</p> <p>18 continue trading S&P options would be</p> <p>19 electronically. The electronic markets, the</p> <p>20 meaning is one-fifth the size; transaction costs</p> <p>21 go up. I had no experience with execution of</p> <p>22 those markets. So it's -- it's a risk that we</p> <p>23 have to move our trading to a different exchange</p> <p>24 or platform.</p> <p>25 Q Okay. So you -- if I'm correct, by</p>

<p style="text-align: right;">Page 478</p> <p>1 August of 2016, you identified, at least on this 2 page alone, five risks related to capacity, and 3 you shared that with Jerry Szilagyi, right?</p> <p>4 A Yes.</p> <p>5 Q And as far as you know, there's 6 nothing more you could have done to make him 7 aware of those. You fully advised him of the 8 risks?</p> <p>9 A Yes.</p> <p>10 Q Okay. So if he needs to make a 11 decision about how to proceed regarding capacity 12 risks, he had all the information to make the 13 decision that he choose -- he chose?</p> <p>14 A Yes. I think that's fair.</p> <p>15 Q Okay. So then if you move to the next 16 page of this third middle presentation, it says, 17 "HFXAX capacity limitations require strategic 18 choices across several fronts."</p> <p>19 And there are five bullet points 20 again, right?</p> <p>21 A Yes.</p> <p>22 Q Okay. And if I read this correctly, 23 is this an example of you and Ms. Rios basically 24 giving Mr. Szilagyi and the folks from New York 25 at Catalyst Capital Advisors ideas for how to</p>	<p style="text-align: right;">Page 480</p> <p>1 Q And, again, you wanted this document 2 to be accurate at the time that it was provided 3 to its readers, right?</p> <p>4 A Sure. Yes.</p> <p>5 Q And do you recall who the intended 6 audience of this presentation was?</p> <p>7 A Again, this would be the same 8 audience. I mean primarily Mr. Szilagyi and 9 whoever else he chose to bring into the 10 conversation.</p> <p>11 Q And do you recall ever having a 12 conversation regarding this presentation with 13 Mr. Szilagyi or anyone else at Catalyst Capital 14 Advisors in New York?</p> <p>15 A This one, I'm not sure. I'm not sure 16 whether we had a meeting, phone discussion, or 17 simply submitted it.</p> <p>18 Q Okay. Is it your understanding that 19 this presentation ultimately was provided to Mr. 20 Szilagyi, though?</p> <p>21 A I think so.</p> <p>22 Q Do you have any recollection of 23 discussing this presentation with Mr. Szilagyi 24 or anyone else at Catalyst Capital Advisors?</p> <p>25 A I'm -- I'm -- I'm not certain</p>
<p style="text-align: right;">Page 479</p> <p>1 deal with the risk that you have identified?</p> <p>2 A Yes.</p> <p>3 Q Okay. And, again, you are a 4 contractor. You're not an employee of Catalyst 5 Capital Advisors. So am I correct that you 6 don't believe -- at least as of August 2016, 7 you -- you don't believe you have the authority 8 to implement any of these five alternatives, 9 right?</p> <p>10 A Correct.</p> <p>11 Q Okay. Who -- who would, as of August 12 2016, have the authority, in your mind, to 13 implement any or all of those strategic choices?</p> <p>14 A Mr. Szilagyi.</p> <p>15 Q Okay. Thank you.</p> <p>16 So if we go to the next page in 17 Exhibit 34, you'll see that there's a third 18 presentation, and this one is identified 19 "November 2016."</p> <p>20 Have you ever seen this document?</p> <p>21 A Yes.</p> <p>22 Q Okay. Did you have any involvement in 23 drafting this document?</p> <p>24 A Yeah, the same as prior. Some parts I 25 probably wrote; some I edited, sure.</p>	<p style="text-align: right;">Page 481</p> <p>1 whether -- whether we had a discussion on this 2 particular presentation or not.</p> <p>3 Q Okay. So why -- so you -- looking at 4 Exhibit 34, there was a presentation created by 5 you and Ms. Rios in May of 2016, August of 2016, 6 and November of 2016. So six months.</p> <p>7 Why -- why were there three 8 presentations?</p> <p>9 A I think it was done on a -- roughly, a 10 quarterly basis, and we -- as I said, we -- we 11 originally put forth this analysis because I 12 felt that we needed to have a framework to 13 continue our discussions because prior to this, 14 they had been more informal, subjective 15 conversations about capacity. We raised a lot 16 of issues, but I felt that beginning, I guess, 17 in May when the first one was done that it was 18 time to become more formal about capacity 19 planning.</p> <p>20 Q And you wanted to make sure that 21 Catalyst Capital Advisors, the named advisor to 22 the futures fund, was aware of the issue, right?</p> <p>23 A Yes. That's correct.</p> <p>24 Q And -- and you felt, through the 25 creation and delivery of these presentations,</p>

<p style="text-align: right;">Page 482</p> <p>1 you were satisfying that obligation, right?</p> <p>2 A Right. I don't know that there was an</p> <p>3 obligation. It was -- it was something that I</p> <p>4 felt was important to communicate.</p> <p>5 Q Perfect. Thank you.</p> <p>6 So if you look at the -- the cover</p> <p>7 page of the November 2016 presentation -- second</p> <p>8 page, third page, fourth page -- the fifth page,</p> <p>9 it's entitled "HFXAX FCM capacity: May versus</p> <p>10 October 2016," right?</p> <p>11 A Yes.</p> <p>12 Q Okay. And then on the left-hand</p> <p>13 column, it says, "May FCM span capacity equals</p> <p>14 1.65 B," right?</p> <p>15 A Yes.</p> <p>16 Q On the right-hand column, it says</p> <p>17 "October FCM span capacity equals 3.25B,"</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q Then there's an asterisk at the bottom</p> <p>21 of the page which says, asterisk, Morgan</p> <p>22 Stanley, open paren, October, close paren, and</p> <p>23 Mazuho, open paren, May, close paren, both ended</p> <p>24 agreements this year.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 484</p> <p>1 upper range of the risk parameters in light of</p> <p>2 capacity issues?</p> <p>3 A No. We -- we did not because I</p> <p>4 remember that very specifically. The -- the</p> <p>5 margin limits were triggered at some point, and</p> <p>6 that caused us to review our risk parameters and</p> <p>7 elect to reduce them. But we didn't -- I mean</p> <p>8 reducing our risk limits doesn't solve a</p> <p>9 capacity issue. It's meant to address risk.</p> <p>10 Q I understand. And I -- I might be</p> <p>11 wrong, but isn't the idea of reducing the upper</p> <p>12 range of the risk parameters to identify -- to</p> <p>13 give you a way of identifying potential capacity</p> <p>14 issues in advance of a problem?</p> <p>15 A No. Absolutely. They are done with</p> <p>16 respect to risk. Remember, the collateral</p> <p>17 capacity span margin is a risk metric. So we --</p> <p>18 we reduce the ceiling or the trigger point on</p> <p>19 that risk metric to manage risk.</p> <p>20 BY MR. SCHMIDT:</p> <p>21 Q I think the question, though, is a</p> <p>22 risk parameter -- one or more was triggered,</p> <p>23 right?</p> <p>24 A Yes.</p> <p>25 Q Okay. Then you had a discussion about</p>
<p style="text-align: right;">Page 483</p> <p>1 A Yes.</p> <p>2 Q Does that refresh your recollection</p> <p>3 that two FCMs ended agreements with Catalyst</p> <p>4 Capital Advisors in 2016?</p> <p>5 A Yes.</p> <p>6 Q And you believe that statement to be</p> <p>7 accurate, right?</p> <p>8 A Yes.</p> <p>9 Q Okay. And if you turn to the next</p> <p>10 page, "HFXAX risk parameters and FMC capacity,"</p> <p>11 there's a box with text in the middle of it.</p> <p>12 That will read very well in a transcript.</p> <p>13 On the upper right-hand corner, do you</p> <p>14 see the box with a text in it?</p> <p>15 A Yes.</p> <p>16 Q Okay. And that text says, "At current</p> <p>17 risk parameters, there is not enough FCM</p> <p>18 capacity to trade the fund to its upper range of</p> <p>19 risk parameters. These parameters were already</p> <p>20 reduced once in July," right?</p> <p>21 A Yes.</p> <p>22 Q So I'm just trying to figure out if</p> <p>23 this refreshes your recollection as to whether</p> <p>24 you or Ms. Rios or anyone else involved with the</p> <p>25 management of the futures fund had reduced the</p>	<p style="text-align: right;">Page 485</p> <p>1 "do we need to modify any of these?"</p> <p>2 A Yes.</p> <p>3 Q Is that fair?</p> <p>4 A Yes.</p> <p>5 Q As part of that discussion, did the</p> <p>6 concept of capacity ever come up, or it was</p> <p>7 never included as part of those discussions?</p> <p>8 A Again, I don't remember. I remember</p> <p>9 discussing risk. I don't remember that capacity</p> <p>10 entered that same discussion.</p> <p>11 Q So you don't know one way or the</p> <p>12 other?</p> <p>13 A Right.</p> <p>14 BY MR. BENSON:</p> <p>15 Q And then if you look at the next</p> <p>16 slide, it says "pit volume." Okay?</p> <p>17 A Yes.</p> <p>18 Q And if you go to the second page</p> <p>19 behind that slide, it says "How high-call volume</p> <p>20 percentage affects trading"?</p> <p>21 A Yes.</p> <p>22 Q And you see "HFXAX percentage of pit</p> <p>23 call volume," right?</p> <p>24 A Yes.</p> <p>25 Q Do you remember earlier today Jake and</p>

<p style="text-align: right;">Page 486</p> <p>1 Sam and I think myself asked you some questions 2 about looking at the futures fund trading volume 3 in relation to the overall futures market and 4 then also looking at it with respect to the call 5 market -- 6 A Yes. 7 Q -- or the put market? Do you remember 8 that? 9 A Yes. 10 Q Okay. Does this slide reflect an 11 analysis of the futures fund's volume with 12 respect to that call segment of the market? 13 A And we are looking at the page 14 entitled "How high-call volume percentages 15 affects trading"? 16 Q Yes. 17 A And so I'm sorry. Could you ask the 18 question again? 19 Q What does this -- what -- what does 20 this page reflect in terms of the percentages to 21 you? 22 A It -- it reflects what percentage our 23 trading was of call volume in -- in the futures 24 pit. 25 Q Okay. And would you agree that there</p>	<p style="text-align: right;">Page 488</p> <p>1 September, and October -- they were all greater 2 than 30 percent, right? At least according to 3 this document? 4 A Yes. 5 Q And the average six months, at least 6 according to this document, was 39 percent of 7 the pit call volume, right? 8 A Yes. 9 Q Okay. Is that -- was that concerning 10 to you? 11 A It -- it was concerning certainly in 12 the context of this document that -- that's why 13 we put it in here, to say that we do have a high 14 level of overall volume in the pit as well as 15 call volume. 16 And as we said before, subjectively, 17 that was something we wanted to monitor. 18 Q And, in fact, if you go to the 19 previous slide, that fund S&P options pit volume 20 2016, that -- that reflects the futures fund's 21 volume as a percentage of the total S&P market, 22 both calls and puts, right? 23 A Yes. 24 Q Okay. So through this -- these two 25 slides, again, you're advising Catalyst Capital</p>
<p style="text-align: right;">Page 487</p> <p>1 are percentages for March, July, September, 2 June, August, and October? 3 (Reporter clarification.) 4 BY MR. BENSON: 5 Q March -- I'm sorry. March, June, 6 July, August, September and October. 7 And then underneath that, it says 8 "Average of six months, the fund is 39 percent 9 of pit call volume." 10 Do you agree with that? 11 A I don't actually know whether that's 12 an average of these numbers on the page or a 13 true 39 percent of total six-month volume. 14 But -- 15 Q And I didn't ask whether you knew it. 16 I just asked whether that's what they -- what 17 they -- the slide reflects. 18 A That's what the presentation says, 19 yes. 20 Q Okay. Do you recall discussing this 21 specific slide with anyone at Catalyst? 22 A No. 23 Q Okay. You would agree that the 24 percentage of the futures fund's volume of the 25 pit call market in June, July, August,</p>	<p style="text-align: right;">Page 489</p> <p>1 Advisors of how large the futures fund's call 2 volume is related to the futures market, right? 3 A Yes. This second slide was done to 4 emphasize -- for a point of emphasis, to get a 5 point across, that we should be mindful of 6 our -- of our volume even if the overall volume 7 is -- is not quite as disquieting. 8 Q Okay. And then to really drive home 9 the point, you know, there's this comment from 10 pit trader. Do you know who the pit trader is? 11 A You know, I don't. This is -- I know 12 this is something Kimberly got. I mean, I -- 13 you know, we -- we only deal with largely two 14 traders. So if I had to guess, this is J.J. 15 O'Keefe. 16 Q Okay. And that's -- that's fine. 17 MR. SCHMIDT: Who's the other 18 possibility? 19 THE WITNESS: Joe Sullivan works with 20 him. 21 MR. SCHMIDT: Oh, an associate of -- 22 THE WITNESS: Yeah. 23 MR. SCHMIDT: -- Mr. O'Keefe? 24 THE WITNESS: Yeah. 25 MR. SCHMIDT: Okay.</p>

<p>1 BY MR. BENSON:</p> <p>2 Q And the comments from the pit trader, 3 is it fair to say they don't paint a pretty 4 picture?</p> <p>5 A Sure. I mean, a couple important 6 things to take, as I read this, is it's -- it's 7 speculative about what might happen in the 8 future. And, second, I do know that Ms. Rios's 9 intent in getting these comments was to drive 10 home the point.</p> <p>11 Q And the point was communicated to 12 Catalyst when it was -- when this presentation 13 was delivered to Mr. Szilagyi and others, right?</p> <p>14 A Yes.</p> <p>15 Q And do you recall Mr. Szilagyi 16 sharing -- ever telling you that he was going to 17 share this with the Mutual Fund Series Trust?</p> <p>18 A No. He did not tell me that.</p> <p>19 Q And do you know whether Mr. Szilagyi 20 thanked you and I said, you know, "I appreciate 21 this; I can now make sure that we have 22 appropriate disclosures to investors"?</p> <p>23 A I certainly don't recall him saying 24 those words.</p> <p>25 Q Okay. And you don't remember him,</p>	<p>Page 490</p> <p>1 answering or being asked to provide any 2 information for a website in which you answered 3 25 questions every investor should ask?</p> <p>4 A I don't remember that.</p> <p>5 Q Okay. All right. Well, we'll see if 6 this helps. So I'm marking this as SEC Exhibit 7 152.</p> <p>8 (SEC Exhibit No. 152 was 9 marked for identification.)</p> <p>10 BY MR. BENSON:</p> <p>11 Q And this is a document that I had to 12 pull off the Wayback Machine, which I don't know 13 if you have been to that website, but it's this 14 great website where you can type in e-mails -- 15 you can type in domain -- or e-mail -- or 16 website addresses, and it will tell you how -- 17 what a -- what a -- what a website looked like 18 in a specific point in time.</p> <p>19 MR. ZILIAK: I apologize. Is there an 20 exhibit number on this? I don't think it showed 21 up on our copy.</p> <p>22 MR. BENSON: 152.</p> <p>23 THE WITNESS: So my previous comment, 24 by the way, now that I look at this, I do 25 recognize the logo, and that is RCM. That's our</p>
<p>Page 491</p> <p>1 after receiving this November 2016 presentation, 2 asking you any questions about your opinion 3 about adequacy of disclosures about capacity, 4 right?</p> <p>5 A No. He did not ask my opinion about 6 disclosures, no.</p> <p>7 Q So Exhibit 34 reflects, you know, 8 these three capacity analyses in 2016, right?</p> <p>9 A Yes.</p> <p>10 Q You -- you thought about capacity for 11 many years, haven't you?</p> <p>12 A Yes.</p> <p>13 Q Okay. In fact, before the futures 14 fund was created and it was just the private 15 Harbor fund, you thought about capacity then 16 too, right?</p> <p>17 A Yes.</p> <p>18 Q And do you recall -- do you know what 19 RCM futures is?</p> <p>20 A Is it R -- RCM --</p> <p>21 Q Not RCM alternatives, if that helps.</p> <p>22 A Yeah. That's right. So then I'm 23 not -- then I don't know what RCM futures is.</p> <p>24 Q Okay. I will show you a document.</p> <p>25 Have you ever -- do you ever remember</p>	<p>Page 493</p> <p>1 introducing broker. So I know who they are.</p> <p>2 (Reporter clarification.)</p> <p>3 BY MR. BENSON:</p> <p>4 Q Okay. And so tell me what you recall 5 about, you know, Exhibit 152. And that's 6 "purposely brought."</p> <p>7 A Sure. I don't have any recollection 8 of doing this, to be honest.</p> <p>9 Q Okay. You don't deny that you 10 answered questions and allowed this to be put up 11 on their website, though, do you?</p> <p>12 A Sure. It's -- yeah. I'm certain they 13 didn't make it up.</p> <p>14 Q Okay. And are you certain that you 15 were the source of the information that's 16 reflected here?</p> <p>17 A Yes. I can't vouch for the final 18 format when it went out, but I suspect I 19 answered these questions.</p> <p>20 Q Okay. And so how did it come about 21 that RCM futures reached out to -- reached out 22 to Ed Walczak? Were you one of their clients?</p> <p>23 A Yes.</p> <p>24 Q Okay. And is it your understanding 25 that this was an opportunity for them to</p>

<p style="text-align: right;">Page 494</p> <p>1 highlight, you know, a successful relationship 2 that they have with one of their clients? 3 A Yes. 4 Q Okay. And -- and you agreed to 5 participate in answering the 25 questions that 6 every investor should ask, right? 7 A Yes. 8 Q So yesterday we talked about the fact 9 that, until 2015, you were a commodity trading 10 advisor to separately managed accounts? 11 A Yes. 12 Q As well as another private fund -- or 13 I'm sorry -- as well as the futures fund? I'm 14 sorry. 15 A Harbor fund, yes. 16 Q Yes. Okay. Well, Harbor fund -- 17 A I'm sorry. Your time frame is 18 correct, in futures fund in 2015. 19 Q So 2015, there's two separately 20 managed accounts? 21 A Yes. Well -- 22 Q And -- 23 A -- many separately managed accounts. 24 Q Okay. Oh, yeah, because you had 25 almost a hundred clients, you think?</p>	<p style="text-align: right;">Page 496</p> <p>1 A -- two documents there. 2 Q And you -- you used those as recently 3 as 2015, right? 4 A I don't recall the last time I used 5 them. 6 Q Okay. Well, you stopped trading the 7 SMAs in 2015, right? 8 A I deregistered Harbor Financial in 9 2015. I may have even stopped the accounts 10 earlier than that. I don't recall exactly when. 11 Q To the extent that you have the PPM or 12 subscription documents for the Voltage Balanced 13 or Voltage Aggressive SMA programs, we're 14 requesting that. 15 MR. ZILIAK: So which materials 16 specifically for those, please? 17 MR. BENSON: Essentially all the 18 offering documents. So they -- we'll call it 19 the PPM and subscription agreements. 20 MR. ZILIAK: Okay. Thank you. 21 MR. BENSON: To the extent there are 22 marketing documents or tear sheets -- 23 MR. ZILIAK: Yep. 24 MR. BENSON: -- we can talk about how 25 deep we need to go on that.</p>
<p style="text-align: right;">Page 495</p> <p>1 A Right. 2 Q Okay. So many separately managed 3 accounts, and then there was the futures fund? 4 A Yes. 5 Q Okay. The many separately managed 6 accounts that you were managing until 2015, is 7 it true that they came under two rubrics of 8 strategies? 9 A Yes. 10 Q The Voltage Balanced and the Voltage 11 Aggressive? 12 A Yes. 13 Q And when you spoke with clients about 14 the Voltage Balanced strategy, did you provide 15 them with any offering documents or -- or 16 materials that described the strategy? 17 A I didn't generally speak with clients; 18 but before they came into the program, they 19 certainly had my PPM and subscription documents. 20 Q Okay. So you had both the PPM and 21 subscription of documents for the SMAs? 22 A Yeah. I think they might have 23 actually been, you know, all one document. I 24 don't know. But there were two -- 25 Q Okay.</p>	<p style="text-align: right;">Page 497</p> <p>1 BY MR. BENSON: 2 Q Okay. So against all of that, I 3 wanted to draw your attention to Question 9 of 4 Exhibit 152. 5 And, again, this is under the header, 6 "25 questions every investor should ask." 7 And RCM futures identifies Question 8 No. 9 as, "What is your program's capacity?" 9 Do you recall answering that question? 10 A Yes. 11 Q Okay. And it says a hundred million 12 dollars, right? 13 A Yes. 14 Q So how did you -- and I'll represent 15 to you that, according to Wayback Machine, this 16 manager's corner responses to "25 questions 17 every investor should ask" appeared on the RCM 18 futures website as of April 6th, 2014. 19 So assuming that that is accurate -- 20 and your attorneys and I can have a discussion 21 about that -- how did you conclude that the 22 Harbor fund's capacity was a hundred million 23 dollars? 24 A I pulled a number out of the air. 25 Q Okay. And that was okay to make a</p>

<p>1 statement like that?</p> <p>2 A I didn't see any reason why it wasn't.</p> <p>3 Q Okay. Have you ever heard of a</p> <p>4 requirement that, when you are making</p> <p>5 representations to the investing public, you</p> <p>6 need to have a reasonable basis?</p> <p>7 A I haven't.</p> <p>8 Q Okay. So you didn't have any</p> <p>9 reasonable or principal basis for that hundred</p> <p>10 million dollars?</p> <p>11 A It was a pure guess and estimate.</p> <p>12 Q Okay. Are you aware that you also --</p> <p>13 when you managed the Harbor fund, you had</p> <p>14 represented to the public that the capacity was</p> <p>15 in the 500 million to \$700 million range?</p> <p>16 A I don't recall.</p> <p>17 Q Okay. So why answer this question if</p> <p>18 you didn't know what the capacity was?</p> <p>19 Why make up a number?</p> <p>20 A Just to put a stake in the ground. It</p> <p>21 was much larger than my program at the time. So</p> <p>22 I felt like I didn't want to misrepresent to</p> <p>23 investors that there was a limited capacity,</p> <p>24 which has been done to encourage investors. So</p> <p>25 I wanted to put a ceiling that I felt was</p>	<p>Page 498</p> <p>1 Q Makes sense. You're not just going to</p> <p>2 go --</p> <p>3 A Sure.</p> <p>4 Q -- straight to the board.</p> <p>5 Did you ever discuss with him the</p> <p>6 Harbor fund's capacity limits?</p> <p>7 A I don't recall, no.</p> <p>8 Q Okay. He never asked you any</p> <p>9 questions about that?</p> <p>10 A I don't remember any.</p> <p>11 Q You don't remember any. Okay.</p> <p>12 Did you ask him whether -- did you</p> <p>13 tell him about your perceived capacity limits?</p> <p>14 A No, because, again, they were</p> <p>15 estimates that were not -- not something I felt</p> <p>16 were important at the time.</p> <p>17 Q So is it your testimony that you were</p> <p>18 not concerned about capacity at the time that</p> <p>19 Harbor fund was a private fund?</p> <p>20 A Correct.</p> <p>21 Q Okay. At what point did you become</p> <p>22 concerned about capacity then?</p> <p>23 A I don't recall a specific moment in</p> <p>24 time. We've -- I've testified and -- yesterday</p> <p>25 and today about, as the fund grew, it seemed</p>
<p>1 reasonable, but I had no real basis to -- to</p> <p>2 estimate that.</p> <p>3 Q Right. Because actually, one of the</p> <p>4 perverse things that can happen when a fund</p> <p>5 announces that it's going to close or enter a</p> <p>6 soft close -- one of two things can happen:</p> <p>7 Either investors will flee or investors will</p> <p>8 rush in before --</p> <p>9 A Yes.</p> <p>10 Q -- the gate is closed, right?</p> <p>11 A Right.</p> <p>12 Q And are you aware of that?</p> <p>13 A Yes. We had those discussions with</p> <p>14 regard to soft close and hedged futures.</p> <p>15 Q Okay. So when you talked to Mr.</p> <p>16 Szilagyi -- remember yesterday we looked at some</p> <p>17 board minutes where you had presented to the</p> <p>18 Mutual Fund Series Trust about the Harbor fund</p> <p>19 and its conversion to a '40 Act fund?</p> <p>20 Do you remember that?</p> <p>21 A Yes.</p> <p>22 Q Okay. That was May of 2013.</p> <p>23 You had talked to Mr. Szilagyi before</p> <p>24 you presented to the board, right?</p> <p>25 A Yes.</p>	<p>Page 499</p> <p>1 prudent and reasonable to consider that.</p> <p>2 Q Okay. But you're unable to identify a</p> <p>3 specific level of AUM at which point it became</p> <p>4 prudent and reasonable to consider capacity,</p> <p>5 right?</p> <p>6 A That's correct.</p> <p>7 MR. SCHMIDT: We are off the record at</p> <p>8 12:03.</p> <p>9 (A discussion was held off the</p> <p>10 record.)</p> <p>11 MR. SCHMIDT: We are back on the</p> <p>12 record at 12:03.</p> <p>13 BY MR. BENSON:</p> <p>14 Q Just because I don't want to -- I</p> <p>15 don't want to have to come back to Exhibit 152</p> <p>16 again.</p> <p>17 There's a statement you make -- so</p> <p>18 we've talked about 2007 being a -- an important</p> <p>19 year for the Harbor fund in terms of there was a</p> <p>20 drawdown and you learned from that drawdown how</p> <p>21 to look at risk differently, right?</p> <p>22 A Yes.</p> <p>23 Q Okay. And in Exhibit 152, you</p> <p>24 actually discuss 2007. So in response to</p> <p>25 Question 21, which asks, "Describe your worse</p>

<p style="text-align: right;">Page 502</p> <p>1 drawdown to date. How did it happen, and what 2 action have been taken, if any, to prevent 3 similar drawdowns?"</p> <p>4 And the answer -- and I want to know 5 if you believe that this is your writing or the 6 substance came from you: "In 2007, we had a 7 peak to valley DD," which I believe is drawdown.</p> <p>8 A Um-hum.</p> <p>9 Q "In excess of 20 percent. We were 10 overleveraged, and our hedging techniques were 11 inadequate. Following that drawdown, we 12 conducted additional backtesting and optimized 13 our leverage at a reduced level. We also 14 developed greatly enhanced risk management 15 techniques both built into our trade structures 16 and more direct stop and adjust/exit rules. We 17 are pleased with how these new risk controls 18 performed during the volatile market conditions 19 from 2008 to the present."</p> <p>20 Is that substance from you?</p> <p>21 A It is.</p> <p>22 Q Okay. And do you believe that 23 that's -- that those words were accurate as of 24 the time that you made them, which I believe was 25 in -- at least before 2014?</p>	<p style="text-align: right;">Page 504</p> <p>1 A Yes. 2 Q After -- 3 A Yes. 4 Q -- in 2007? 5 And did you create more direct stop 6 and adjust exit rules for the Harbor fund? 7 A Yes. 8 Q What are those stop and adjust/exit 9 rules that you developed? 10 A Those are the risk matrix that we've 11 viewed prior. 12 Q Which specific risk metrics are the 13 direct -- well, what does direct stop and 14 adjust/exit rules -- what does that mean? 15 A That means putting an objective, 16 quantifiable trigger in place that requires 17 action. I think my testimony from yesterday 18 described the various ways in which you can 19 execute a stop loss. 20 Q Yes. 21 A You can do it with a mechanical order 22 with your broker? 23 Q Yes. 24 A You can do it with a trigger that is 25 internal, that alerts you to take some action,</p>
<p style="text-align: right;">Page 503</p> <p>1 A Yes. 2 Q Okay. And you believe that they are 3 accurate today?</p> <p>4 A I no longer run these accounts that 5 this is referring to.</p> <p>6 Q Okay. But I think you have testified 7 that the strategy -- I mean marketing materials 8 for the futures fund, they go back to 2005?</p> <p>9 A Sure.</p> <p>10 Q So I'm assuming that you're going to 11 have to agree that the fund has not materially 12 changed since 2005, right?</p> <p>13 A Right. But these are the Voltage and 14 Balance programs, which were very different than 15 the futures fund.</p> <p>16 Q Well --</p> <p>17 A Well, they were different. I won't 18 say "very different," but they were different.</p> <p>19 Q So is it your -- maybe I'm wrong.</p> <p>20 Is it your -- didn't the Harbor fund 21 have a drawdown in excess of 20 percent in 2007?</p> <p>22 A Yes.</p> <p>23 Q Okay. Did you develop greatly 24 enhanced risk management techniques for the 25 Harbor fund in 20 --</p>	<p style="text-align: right;">Page 505</p> <p>1 and you can do it -- and once you take action, 2 you can do that in a variety of ways which I 3 described previously.</p> <p>4 Q Okay. Great. That's helpful.</p> <p>5 And you would agree that those risk 6 metrics, they were mandatory? They weren't 7 discretionary, right?</p> <p>8 A They were objective, and that required 9 at least the consideration of some action.</p> <p>10 Q They were to be strictly followed?</p> <p>11 A They were objective, and they required 12 recognition in some action.</p> <p>13 Q Well, I think -- didn't -- didn't you 14 describe them as "strict"? Isn't that an 15 adjective that you have used?</p> <p>16 A Yeah. It -- it says -- well, not -- 17 not in this paragraph. I don't recall if strict 18 was somewhere else, but --</p> <p>19 Q I guess my question is, have you ever 20 used the adjective "strict" to describe the 21 futures fund's risk measures?</p> <p>22 A I don't know.</p> <p>23 Q Okay. Have you ever described the 24 exit, slash, adjust rule as, "A hard rule"?</p> <p>25 A I may have with the standpoint that</p>

<p style="text-align: right;">Page 506</p> <p>1 "hard," to me means written down, quantifiable, 2 and objective, not subjective. 3 Q Right. Okay. In fact, if you look at 4 Exhibit 152 under question -- in response to 5 Question 15, you say -- and if -- if you 6 didn't -- if you write this, let me know. 7 "We trade options on the S&P 500 8 futures contract. We manage risk aggressively. 9 We build hedges into every trade. We monitor 10 total portfolio risks with advanced options 11 simulations software. We use control charting 12 of key risk factors with absolute adjustment 13 rules. We have an hard exit/adjust rule based 14 on total portfolio dollar exposure."</p> <p>15 You wrote this, right?</p> <p>16 A Yes.</p> <p>17 Q Okay. So what did you mean, when you 18 wrote "We have a hard exit/adjust rule based on 19 total portfolio dollar exposure"?</p> <p>20 A That -- that refers to the open option 21 premium metric in our risk framework.</p> <p>22 25</p> <p>23 BY MR. WASSERMAN:</p> <p>24 Q But the open option premium metric 25 doesn't measure exposure, right?</p>	<p style="text-align: right;">Page 508</p> <p>1 Q So before we go back, because I don't 2 want have to revisit any documents, going back 3 to Exhibit 34, the three presentations about 4 capacity constraints. 5 A Yes. 6 Q They are dated May 2016 through 7 November 2016, right? 8 A Correct. 9 Q And we talked about how the purpose of 10 these documents, among others, was to apprise 11 Catalyst of a potential risk that they could 12 take whatever action they wanted to, correct? 13 A Correct. 14 Q During the period May 2016 through 15 November 2016, am I correct that you 16 participated in -- I believe they're called 17 "open house calls" or "weekly calls with 18 wholesalers"?</p> <p>19 A I don't remember exactly when they 20 started, but that became a regular practice at 21 some point.</p> <p>22 Q Okay. And do you have any belief that 23 they -- that they were not going on, at least -- 24 if not weekly, at least monthly, during the 25 period May 2016 through November 2016?</p>
<p style="text-align: right;">Page 507</p> <p>1 A I think it does. 2 Q Well, the open option premium metric 3 is a measurement of -- of the aggregate value of 4 the options in your portfolio, right? 5 A Yes. 6 Q What does that have to do with dollar 7 exposure? 8 A The open option premium -- and, again, 9 I -- I certainly may have gotten it wrong, but 10 that's what I meant in this statement. 11 Q What did you mean in this statement? 12 A My statement that says, "We have a 13 hard exit/adjust rule based on total portfolio 14 dollar exposure." My meaning was "hard," in the 15 sense of written down and quantified. 16 Adjust/exit rule means a trigger to suggest that 17 we evaluate and potentially perform one of the 18 adjustment or exit transactions I've testified 19 to previously. 20 And based on total portfolio dollar 21 exposure, my meaning was, what is the short 22 option premium in the portfolio because that 23 typically represents -- to me, again, in running 24 the strategy, that's an exposure measure. 25 BY MR. BENSON:</p>	<p style="text-align: right;">Page 509</p> <p>1 A Again, I honestly don't remember when 2 we started doing that. 3 Q Okay. And we can establish that, you 4 know, date range specifically. 5 But, more generally, do you remember 6 during those calls with wholesalers, ever 7 advising the wholesalers of this potential 8 capacity issue? 9 MR. WASSERMAN: But to clarify, the 10 "open house calls" aren't for wholesalers; 11 they're for advisors, right? 12 THE WITNESS: Both. But yes, advisors 13 are the intended audience. Sure. 14 BY MR. BENSON: 15 Q I'm sorry. Thank you. That's 16 important. So strike that line of questions. 17 You participated in open house calls 18 that were attended by both financial advisors 19 and internal and/or external wholesalers from 20 time to time, correct? 21 A Correct. 22 Q Do you -- do you have any knowledge as 23 to when you started participating in those open 24 house calls? 25 A No.</p>

<p style="text-align: right;">Page 510</p> <p>1 Q We'll figure out the specific dates. 2 Do you recall ever raising the concept 3 of capacity issues, capacity constraints, 4 execution challenges, or FCM constraints, or any 5 issues related to those during these open house 6 calls? 7 A I don't recall specifically whether 8 those issues came up. But they may have, but I 9 don't recall specifics. 10 Q Okay. To prepare for those open house 11 calls, did you put together bullet points? 12 A No. 13 Q Did you come up with an agenda? 14 A No. 15 Q Was it something that you led, or did 16 you react to questions? 17 A Both. 18 Q Okay. Do you recall receiving any 19 questions about capacity? 20 A I've certainly gotten questions about 21 capacity in various venues. Whether it's on the 22 calls or whether it was in a one-on-one call 23 with an advisor, I've gotten questions. 24 Q And how did you respond to those 25 questions, if you recall?</p>	<p style="text-align: right;">Page 512</p> <p>1 issue of capacity came up, were just as open and 2 frank with the investment advisors as you were 3 with Mr. Szilagyi? 4 A With investment advisors, again, as -- 5 as has been -- or, as I've testified, I don't 6 have the authority to makes decisions. So I'm 7 much more cautious about suggesting particular 8 actions. 9 So I tried to give more generic 10 answers on those calls to the best of my ability 11 without going into some of the level of detail 12 that I talked to Mr. Szilagyi about. 13 Q So your answers are more vague and 14 less detailed? 15 A Yes. 16 Q Okay. 17 BY MR. BENSON: 18 Q But you still believe them to be 19 factually accurate? 20 A Yes. 21 Q And you did not make those vague 22 and -- those vague statements in a way to -- 23 with the intent to mislead, I assume? 24 A That's correct. I did not. 25 MR. SCHMIDT: Okay. We are off the</p>
<p style="text-align: right;">Page 511</p> <p>1 A Depending on the timing of the 2 question, I gave my best judgment at the time 3 about capacity. And -- and my typical response 4 was, we're fine now, we'll check at somewhat 5 arbitrarily levels. 6 When we hit a billion, we'll take the 7 temperature of the water. When we hit a billion 8 and a half, we'll take the temperature of the 9 water. That would be my typical response. 10 Q You saved me a lot of questioning 11 because I was going to ask you if you had a 12 typical response. 13 I have nothing further on that. But 14 I'd defer to my colleagues of the SEC and Sam 15 Wasserman of CFTC. 16 BY MR. SCHMIDT: 17 Q Just one question: You testified, 18 when we go through the presentations and e-mails 19 about capacities, that you were very open and 20 frank with Mr. Szilagyi about your concerns 21 about capacity, the potential risks that you 22 saw, right? 23 A Yes. 24 Q Okay. Would you characterize your 25 responses on the open house calls, when the</p>	<p style="text-align: right;">Page 513</p> <p>1 record at 12:16 p.m. 2 (Whereupon, at 12:16 p.m., a luncheon 3 recess was taken.) 4 A F T E R N O O N S E S S I O N 5 BY MR. SCHMIDT: 6 Q Back on the record at 1:18 p.m. 7 Mr. Walczak, during the lunch break 8 and the incredibly short meeting break we had 9 before the lunch break, the staff of the SEC or 10 the CFTC did not have any substantive 11 discussions with you; is that correct? 12 A That's correct. 13 Q Okay. Right before we took a break, 14 we were talking about capacity issues. And in 15 particular, we discussed three capacity 16 PowerPoints; one in May, one in August, and one 17 in November of 2016, right? 18 A Yes. 19 Q And with regard to the third one in 20 November of 2016, you testified that it was your 21 belief that that got sent to Mr. Szilagyi in New 22 York. But without an e-mail or something like 23 that, you couldn't say for sure. Is that fair? 24 A That's correct. 25 Q Okay. So over the lunch break, I went</p>

<p style="text-align: right;">Page 514</p> <p>1 and saw if I could find an e-mail. So I just 2 want to show you what's been marked as Exhibit 3 153.</p> <p>4 (SEC Exhibit No. 153 was 5 marked for identification.)</p> <p>6 BY MR. SCHMIDT:</p> <p>7 Q And I just have the cover e-mail. 8 A Um-hum. 9 Q The presentation is an attachment, 10 which is part of the exhibit that your client 11 has.</p> <p>12 MR. ZILIAK: I'm sorry. What is the 13 exhibit number, please? Okay. 153. Thank you.</p> <p>14 BY MR. SCHMIDT:</p> <p>15 Q So all I want to establish is that 16 this presentation, which is the one we talked 17 about in November of 2016, if you want to flip 18 to it, was sent by Ms. Rios to Mr. Szilagyi and 19 Mr. Amhrein who worked at Catalyst in New York. 20 And it looks like it was sent specifically in 21 reference to a call that you guys were going to 22 have on November 2nd, 2016; is that correct?</p> <p>23 A That is correct. 24 Q Okay. The only other question is: Do 25 you remember anything about this call other than</p>	<p style="text-align: right;">Page 516</p> <p>1 as images, they are produced as native Excel 2 spreadsheets that actually -- 3 A Okay. 4 Q -- open a -- 5 A All right. 6 Q In this case, it's an audio file. But 7 as a placeholder, we got a Bates stamp image 8 with the note as it reflects "produced in native 9 format." 10 A Okay. 11 Q Does that answer your question? 12 A Yes. Thank you. 13 Q The audio file, the native audio file, 14 as it's been produced to us, indicates that it 15 is the National Open House HFX/CFH call from 16 June 7th of 2016. 17 I'm going to play portions of that 18 call for you or one main portion of that call 19 for you. 20 But before I do, just to confirm, 21 you're familiar with these national open house 22 calls, correct? 23 A I am. 24 Q And the general format of the calls is 25 that somebody introduces you and Kim. You do a</p>
<p style="text-align: right;">Page 515</p> <p>1 what you've already testified to this morning? 2 A No. 3 Q Okay.</p> <p>4 BY MR. WASSERMAN:</p> <p>5 Q Okay. Mr. Walczak, we're going to 6 mark as --</p> <p>7 MR. BENSON: I'm handing you a 8 document that's been marked as SEC Exhibit 154. 9 (SEC Exhibit No. 154 was 10 marked for identification.)</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q And this is a slip sheet to a document 13 that was produced in native form. 14 It specifically -- actually it's not 15 the document. 16 It's an audio file that was produced 17 in native form. 18 The Bate stamp of this slip sheet is 19 Catalyst 00357978?</p> <p>20 A I'm sorry. If I could ask, what does 21 that mean "produced in native format"?</p> <p>22 Q It means in the form in which it 23 originally existed.</p> <p>24 So, for example, you know, when Excel 25 sheets are produced, instead of being produced</p>	<p style="text-align: right;">Page 517</p> <p>1 spiel about HFX. She does a spiel about CFH, 2 and then you take questions, right? 3 A Correct.</p> <p>4 MR. BYLINA: Can you give me that date 5 one more time? I'm sorry.</p> <p>6 A Sure. June 7th, 2016.</p> <p>7 MR. BYLINA: Thank you.</p> <p>8 MR. WASSERMAN: And to confirm, the 9 transcript is going to reflect the audio of the 10 call.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q This is from the beginning. 13 (Audio played.)</p> <p>14 "Welcome everyone. And thank you for 15 your attending our bi-monthly Catalyst funds 16 portfolio managers open house conference call."</p> <p>17 BY MR. WASSERMAN:</p> <p>18 Q Do you recognize that voice?</p> <p>19 A I'm not sure.</p> <p>20 Q Who typically is the MC, so to speak, 21 of these calls?</p> <p>22 A There's been at least three.</p> <p>23 Q Who are the three?</p> <p>24 A One is Brian something. I don't know 25 these guys. So I don't know names.</p>

<p>1 Q You just show up?</p> <p>2 A Absolutely.</p> <p>3 Q Okay. Fair enough.</p> <p>4 (Audio played.)</p> <p>5 "Before we begin, I'd like to remind</p> <p>6 everyone today's call may include</p> <p>7 forward-looking statements. These statements</p> <p>8 represent the firm's belief regarding future</p> <p>9 events that, by their nature, are uncertain and</p> <p>10 outside of the firm's control. The firm's</p> <p>11 actual results and financial condition, it may</p> <p>12 differ, possibly materially from what is</p> <p>13 indicated in those forward-looking statements."</p> <p>14 BY MR. WASSERMAN:</p> <p>15 Q Okay. And this is a normal preamble</p> <p>16 that he gives at the beginning of the calls,</p> <p>17 right?</p> <p>18 A Yes.</p> <p>19 Q Okay. I'm going to jump forward to</p> <p>20 Minute 22 in the call. And if you'll give me a</p> <p>21 moment just to make sure I get exactly there.</p> <p>22 (Audio played.)</p> <p>23 "It's star, then five, and put</p> <p>24 yourself in the cue.</p> <p>25 The last question revolves -- and this</p>	<p>Page 518</p> <p>1 A Yes.</p> <p>2 Q And the voice now speaking, is that</p> <p>3 your voice?</p> <p>4 A It is.</p> <p>5 Q "Attention to forward management, in</p> <p>6 my mind is the key."</p> <p>7 I'm going to move it back ten seconds</p> <p>8 to the beginning of when you start speaking.</p> <p>9 MR. BENSON: For the record, it's 23</p> <p>10 minutes, 10 seconds in the file. 22:57 sorry.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q I'm moving it back to 22:57.</p> <p>13 "To mitigate that -- that potential</p> <p>14 risk in the fund."</p> <p>15 "Yeah. Those are all great questions</p> <p>16 because, as I mentioned before risk management,</p> <p>17 in my mind, is the key to outperforming as a --</p> <p>18 as a portfolio manager as opposed to really</p> <p>19 chasing returns. Managing risk is the secret.</p> <p>20 So I'm anxious -- I'm always very happy to talk</p> <p>21 about that.</p> <p>22 So the first thing, pure and simple,</p> <p>23 is our -- our -- our metrics are dialed in to</p> <p>24 limit our drawdowns to eight percent. And</p> <p>25 there's no guarantees in the world especially in</p>
<p>1 is from Axa Tima in New York.</p> <p>2 BY MR. WASSERMAN:</p> <p>3 Q This is the same voice at the</p> <p>4 beginning of the call, correct?</p> <p>5 A Sounds that way to me, yes.</p> <p>6 (Audio.)</p> <p>7 Q "To the -- it is surrounded around the</p> <p>8 stress testing and drawdown, and it goes as --</p> <p>9 as follows: What would be the, of course, worst</p> <p>10 case black-swan scenario for the fund? What is</p> <p>11 the max drawdown you are shooting for given your</p> <p>12 stress test, the risk parameters, and if you</p> <p>13 could speak a little bit more to if you see a</p> <p>14 significant drawdown when you're doing the</p> <p>15 stress test; if like, for example, there was a</p> <p>16 ten percent drawdown or move up in the market</p> <p>17 which caused the fund to fall out of your --</p> <p>18 your -- your four to six percent drawdown</p> <p>19 parameters, how do you -- how do you change the</p> <p>20 portfolio to mitigate that -- that potential</p> <p>21 risk in the fund?"</p> <p>22 "Yeah. Those are all great questions</p> <p>23 because as I --</p> <p>24 BY MR. WASSERMAN:</p> <p>25 Q The voice just changed, correct?</p>	<p>Page 519</p> <p>1 markets. But -- but that's our goal in</p> <p>2 everything we do, is keep our drawdown to eight</p> <p>3 percent, and since we established these metrics,</p> <p>4 they are basically -- in their current form,</p> <p>5 were established in mid-2007 after we had a</p> <p>6 drawdown. When the fund was in its private</p> <p>7 form, we had a large drawdown that I felt was</p> <p>8 unacceptable. And so did a lot of work on risk</p> <p>9 management at that point, and what factors</p> <p>10 contributed to the drawdown as a risk, and came</p> <p>11 up with the structure of stress testing that we</p> <p>12 use today. The goal being to limit a drawdown</p> <p>13 to eight percent."</p> <p>14 So far is everything that you've said</p> <p>15 on the call accurate?</p> <p>16 A Yes.</p> <p>17 Q "Subsequent to that time, we have been</p> <p>18 successful in doing that.</p> <p>19 I think our largest is actually a</p> <p>20 shade over eight percent but less than nine.</p> <p>21 And that actually occurred in 2014, in</p> <p>22 the fourth quarter.</p> <p>23 So that's our -- that's our metric.</p> <p>24 Our -- our methodology is to look at</p> <p>25 stresses on the portfolio.</p>

<p>1 So we enter quick trades or 2 (indiscernible) certain things. We enter call 3 trades (indiscernible) certain things. We enter 4 those trades in different expiration months, 5 different stripes.</p> <p>6 We end up with a pretty complex 7 portfolio of options position that are all 8 entered for -- for many different reasons at 9 different times. But they all comprise a fairly 10 complex portfolio.</p> <p>11 So even if you're an options' guy, if 12 you look at a portfolio statement, you have no 13 chance whatsoever of understanding how that 14 portfolio will behave under different market 15 conditions unless you have very sophisticated 16 options modeling software which, of course, we 17 do."</p> <p>18 Q Same question: So far everything that 19 you're stating on the call has been accurate?</p> <p>20 A Yes.</p> <p>21 Q "So in that software, we have our 22 portfolio built, and we can then take stresses 23 and say "what if," and do lots of what ifs. And 24 we do it graphically; meaning, instead of sort 25 of throwing darts at a wall and saying, what if</p>	<p>Page 522</p> <p>1 different lines on that graph of the port -- 2 what the portfolio value will look. 3 And those five lines are five 4 different points in time.</p> <p>5 So we can now see what happens if the 6 S&P goes up 25 tomorrow, if it's up 25 points at 7 the end of the month; if it's up 60 points three 8 weeks from now.</p> <p>9 So -- and, again, without having to 10 consider so much data that you can't manage it, 11 we can see it graphically in terms of the curves 12 at different points in time."</p> <p>13 Q Same question: Everything so far -- 14 all the statements you have made so far are 15 accurate?</p> <p>16 A Yes, they are.</p> <p>17 Q And I ask for your patience. We are 18 going to go through about another minute or so 19 of this.</p> <p>20 "And then we'll, of course, enter 21 the -- the most important variable in option 22 pricing, and that is volatility.</p> <p>23 So it's actually less important about 24 where the price of the S&P is than where 25 volatility or -- even in the simplest form, is</p>
<p>Page 523</p> <p>1 the S&P goes to 2150 next week and we figure 2 that out, and what then if it goes to 1900 at 3 the end of the month, we do it graphically so we 4 can see an overview; meaning, we look at a 5 graph, and all along the bottom of that graph, 6 is the price of the S&P, and along with the 7 vertical axis, value of the portfolio.</p> <p>8 So we can see a curve that says, here 9 is what -- how the portfolio is going to behave 10 as the market moves back and forth in price."</p> <p>11 Q What's the software that you're 12 referring to?</p> <p>13 A Excuse me. OptionVue.</p> <p>14 Q So far, are the statements that you 15 made on the recording accurate?</p> <p>16 A Yes.</p> <p>17 Q "Now, for us in options, we have two 18 other very important variables to consider. One 19 is called volatility, and one is 20 (indiscernible).</p> <p>21 And neither of those are factors 22 that -- for example, you're looking at an equity 23 portfolio. But for us, it's very important.</p> <p>24 So as we look at that graph, we 25 actually see -- in a base case, we see five</p>	<p>Page 525</p> <p>1 the VIX.</p> <p>2 So, fortunately, within our option 3 software, not only does the software 4 automatically anticipate, based on past 5 behavior, what will happen to volatility -- in 6 other words, the -- the software knows that, if 7 the market is down ten percent, volatility is 8 going to be higher. And it uses historical data 9 to project how much higher it will be. And 10 that's reflected in the portfolio value of these 11 options that we look at.</p> <p>12 And, similarly, to the upside, we know 13 that volatility is likely to be plump it 14 (phonetic).</p> <p>15 So the model is very sophisticated. 16 It lets us look at the portfolio values under a 17 wide variety of scenarios, and does it 18 continuously so we don't have to pick random 19 points.</p> <p>20 However, we do pick stress points 21 and -- and what we -- we look at is a plus or 22 minus five and ten percent price excursion and 23 also a minus 15 percent excursion because we all 24 know that downside moves can be larger and more 25 rapid, generally speaking, than upside moves.</p>

Page 526	Page 528
1 So we look at all these stress points 2 on those curves across time for places in which 3 the portfolio values would cause us an 4 unacceptable drawdown. 5 And so when we identify that there's 6 an unacceptable risk against our eight percent 7 parameter, we now use those same -- that same 8 modeling software to figure out what to do about 9 it."	1 does very well. 2 Q Okay. Is this one of those? 3 A Is this one of what? 4 Q One of her e-mails of all or a portion 5 of her technical analyses of what's going on at 6 that particular time? 7 A Sure. This would be an example of 8 one. 9 Q Okay. So she sends it to you. What 10 would you do with this information?
10 Q Have all the statements made by you 11 that we just listened to -- sorry. 12 Are all the statements made by you 13 that we just listened to accurate? 14 A Yes, they are. 15 Q I have nothing further on that right 16 now.	11 A I would probably click on the link to 12 see what she's talking about. 13 Q Okay. Did you? 14 A I don't remember. 15 Q Did you talk to her about it? 16 A I don't remember that either. 17 Q Did you take any action based on it? 18 A I don't -- I don't know. 19 Q You don't know one way or the other?
17 MR. SCHMIDT: Just one clarification. 18 When he said VIX, it's capital V-I-X, correct? 19 THE WITNESS: (Nodding head.) 20 MR. ZILIAK: For the transcript? 21 THE WITNESS: (No verbal response.) 22 MR. SCHMIDT: Okay. 23 BY MR. SCHMIDT: 24 Q Mr. Walczak, I think we mentioned a 25 couple times today and yesterday that there -- I	20 A Right. 21 BY MR. BENSON: 22 Q Do you know where you physically were 23 located on the planet Earth on December 8th, 24 2016? 25 A I don't recall. On that specific
Page 527	Page 529
1 guess we've -- we've discussed things sort of 2 leading up to December of 2016, correct? 3 A Yes. 4 Q So I want to start talking about 5 December 2016, just to place, in your mind, 6 where we're talking now. 7 A Okay. 8 Q Okay. So I want to show you an e-mail 9 that you got from Ms. Rios in -- on December 10 8th, 2016. 11 Did you remember receiving this 12 e-mail? 13 A No. 14 Q Okay. What does this e-mail tell you? 15 A I don't know. It refers to a link. I 16 don't know what -- what indicator she is talking 17 about. 18 Q Do you have any reason to believe you 19 didn't receive this e-mail from Ms. Rios? 20 A No. 21 Q Okay. Has she ever sent you an e-mail 22 that is similar in that market indicators 23 indicate that something bad is on the horizon? 24 A She, from time to time, has sent me a 25 variety of technical analyses. That's what she	1 date, I don't recall. 2 BY MR. SCHMIDT: 3 Q Do you -- are you often in Wisconsin 4 in December? 5 A Sometimes. 6 Q Where else could you be? 7 A Either San Francisco or occasionally 8 Hawaii. 9 Q Do you have homes in both -- or 10 property in both places? 11 A Yes. 12 Q Okay. Generally much warmer in San 13 Francisco and Hawaii than it is in Wisconsin in 14 December? 15 A That's correct. 16 Q Okay. Let me show you -- this is an 17 e-mail. It's marked as SEC No. 32. 18 (SEC Exhibit No. 32 was 19 marked for identification.) 20 BY MR. SCHMIDT: 21 Q Now, the top e-mail is between Mr. 22 Szilagyi and Ms. Rios. It's dated December 9th, 23 correct? 24 A Yes. 25 Q But if you go one e-mail down, you're

<p style="text-align: right;">Page 530</p> <p>1 a recipient of an e-mail earlier in the day on 2 December 9th, 2016, correct? 3 A Yes. 4 Q From Mr. Szilagyi? 5 A Yes. 6 Q Okay. Did you get this e-mail? 7 A I don't recall specifically. I don't 8 see a reason why I wouldn't have. 9 Q Okay. Can you flip to the second 10 page? 11 So the context of this is Mr. Szilagyi 12 is forwarding an e-mail from somebody he knows 13 in the industry and he's known a while, correct? 14 A I think that that's what he said here. 15 Yes. 16 Q So he sends it to you. And this is -- 17 so have you reviewed this on, what's on page -- 18 the second page of this e-mail? 19 A Okay. I've read it. 20 Q Okay. Do you remember this? 21 A I think I do, yes. 22 Q Okay. Did you talk to Mr. Szilagyi or 23 Ms. Rios about it? 24 A That I don't remember. 25 Q Why would Mr. Szilagyi send this to</p>	<p style="text-align: right;">Page 532</p> <p>1 the same concern, right? 2 A Yes. 3 Q Okay. Then if you go to the first 4 page, it's an e-mail between Mr. Szilagyi and 5 Ms. Rios, right? 6 And Ms. Rios says, "At four billion, 7 we can't exactly hide the size. Just think what 8 five billion would look like. J.J. tells us 9 that the vultures are circling." 10 So J.J. is your guy in the pit in 11 Chicago, correct? 12 A Yes. 13 Q Do you know of any comment by J.J. 14 that is either "The vultures are circling" or 15 words to that effect? 16 A I don't recall that comments. Clearly 17 I talk to him pretty much every day. And I 18 don't recall any conversation where he made a 19 comment like that. 20 Q No comment about market makers are 21 taking advantage of somebody they know his size, 22 they got him on the ropes, nothing like that? 23 A I don't remember that, no. 24 Q Okay. If J.J. remembers that 25 conversation and said he had it with you, do you</p>
<p style="text-align: right;">Page 531</p> <p>1 you? Do you know? 2 A Well, he said FYI, so I guess he 3 thought it was something I'd be interested in. 4 I mean, again, I don't recall specifically. But 5 the body of his e-mail, to me, seems to suggest 6 it's an interesting fact as opposed to anything 7 more urgent. 8 Q Well, it specifically makes reference 9 to one of the concerns that you raised long ago, 10 at this point, which was there's a potential 11 risk that somebody's size, right, their volume 12 in the market or in the pit, could allow others 13 to take advantage of that size, right, and raise 14 prices on them? Isn't that the concern that you 15 detailed earlier, one of the potential risks? 16 A Sure. 17 Q Right? So what this is saying is, 18 market makers have them on the ropes and know 19 the size, right? 20 A Right. 21 Q That's essentially the concern that 22 you were alluding to before? I'm not saying 23 that this refers to you -- 24 A Right. 25 Q -- and the futures fund. But that is</p>	<p style="text-align: right;">Page 533</p> <p>1 have any reason to believe that he's not telling 2 the truth? 3 A No. 4 Q Okay. You just can't remember one way 5 or another whether it occurred? 6 A Exactly. 7 Q Okay. 8 BY MR. BENSON: 9 Q So given your lack of memory, if 10 Mr. -- if Mr. O'Keefe had a belief that he told 11 you that, it would be reasonable believe -- to 12 believe that his memory is correct? 13 A Oh, I wouldn't say that. I have no 14 reason to believe he would make it up. 15 Q Okay. 16 A But he, like I, might not remember 17 exactly what occurred. 18 Q Okay. If you will look at Exhibit 32, 19 just one quick question. 20 Do you see the second to the last 21 sentence on Page 2 of this exhibit? It says, 22 "Easy to get stuff on, very hard to get out." 23 Do you see that? 24 A Yes. 25 Q Earlier today you had talked about how</p>

<p style="text-align: right;">Page 534</p> <p>1 you perceived execution risk arising from the 2 size of the futures fund as relating to the 3 entry or putting on of trades, correct? 4 A Correct. 5 Q Do you believe that the execution risk 6 arising from the size of the futures fund also 7 related to exiting positions? 8 A It -- it certainly may apply to any 9 transactions. At the time I was only 10 considering entries. 11 Q Right. And that's what I was trying 12 to figure out. 13 What would be the mechanical 14 difference between putting on a trade or getting 15 out of a trade because, in both circumstances, 16 isn't it a bilateral transaction? 17 A Sure. 18 Q So could you think of a distinction or 19 could you articulate a distinction for me today 20 where you could tell me why the execution risk 21 would differ between putting a trade on and 22 putting a trade off, given that they are both 23 bilateral transactions? 24 A The difference would be the structure 25 of the trade. Typically our adjustment and exit</p>	<p style="text-align: right;">Page 536</p> <p>1 you exit, you may only have one or two. It's a 2 much smaller trade transaction, less complex. 3 Q And isn't it true -- and I might be 4 wrong. Isn't it true that while your -- while 5 you're correct that a one, buy three would have 6 four contracts, you wouldn't necessarily have to 7 put on all four contracts at the same time, 8 right? 9 A But that's what we do. 10 Q Always? 11 A Always. 12 Q Okay. And you -- when you're exiting 13 a trade, you would not exit all four at the same 14 time? 15 A We might. But it's more much common 16 to exit one of the "legs," as the terminology 17 goes. 18 MR. BENSON: Okay. 19 BY MR. SCHMIDT: 20 Q Ms. Rios writes to Mr. Szilagyi that, 21 "At 4 billion, we can't exactly hide the size." 22 Do you see that? 23 A I do. 24 Q Okay. Do you agree with her? 25 A I'm not sure specifically what she</p>
<p style="text-align: right;">Page 535</p> <p>1 trades are different than our entry trades. 2 Q And can you articulate that with 3 further detail? 4 A Sure. Entry trades are typically a 5 buy one, sell three; buy one, sell two trade. 6 Adjustment trades might be buy one, sell one. 7 Might be buy one exclusively. Might be buy two, 8 sell one, any variety. 9 But entry trades are much more 10 consistent in their structure. 11 Q So you, in that -- in that example, 12 you provided an entry trade and an adjustment 13 trade, but you didn't provide me an exit trade. 14 So do you have exit trades? 15 A I did provide an exit trade "buy one 16 back, buy two back." 17 Q Okay. 18 A Simply buying calls. 19 Q So the -- 20 A And to further respond to your 21 question -- 22 Q Yeah. 23 A -- the significant difference in those 24 transactions is, when you put on a one, buy 25 three, you have four contracts in place. When</p>	<p style="text-align: right;">Page 537</p> <p>1 meant by "hide the size." 2 So it's -- it's hard for me to express 3 an opinion on that one. 4 Q Okay. So the context of this e-mail 5 is Mr. Szilagyi sending -- forwarding the 6 comment by somebody he knows in the industry, 7 that -- regarding some trader or fund, "The 8 market makers have them on the ropes and know 9 his size." 10 Okay. So in that context, whether or 11 not similarly the futures fund can hide their 12 size at 4 billion, so the market makers don't 13 get them on the ropes and take them advantage of 14 them, did you with the statement or not? 15 A Again, I'm not -- I'm honestly not 16 sure exactly what she meant by that, other than, 17 in the context of this e-mail, at \$4 billion, 18 market makers may, in fact, know that we trade 19 in thousands of contracts. 20 So I guess, if that's what she meant, 21 then I can't disagree with it. 22 Q You don't disagree with that? 23 A No. 24 MR. SCHMIDT: Okay. 25 BY MR. WASSERMAN:</p>

<p style="text-align: right;">Page 538</p> <p>1 Q And to be clear, it was your testimony 2 before that J.J. told you that -- at some point, 3 that the traders were aware of your positions, 4 right?</p> <p>5 A We had discussions about whether or 6 not they were, and -- you know, they were 7 general discussions over long periods of time. 8 And so we discussed about, well, can they tell 9 from open interest? Do they know because J.J. 10 is doing it? So we had those conversations.</p> <p>11 And I wanted to satisfy myself about 12 exactly how they impacted execution.</p> <p>13 And so the consensus was there were 14 certainly times when other traders understood 15 that it was a large fund trading and they could 16 check open interest like anybody else and 17 suspect that we might be that trader.</p> <p>18 But the conclusion certainly, in my 19 mind, was that there wasn't an impact or 20 consistent impact on our execution.</p> <p>21 Q I'm not asking you to address the 22 execution issue.</p> <p>23 I'm simply asking you to confirm what 24 I think you testified earlier, which was, at 25 various points, J.J. relayed to you his</p>	<p style="text-align: right;">Page 540</p> <p>1 plausible that they had some sense for our 2 positions. But this is not something I thought 3 about on a daily basis to say, before December, 4 yep, those traders knew where we were. I 5 honestly don't know.</p> <p>6 BY MR. SCHMIDT:</p> <p>7 Q In your answer, does it at all depend 8 on a distinction between traders knowing that 9 the futures fund is taking certain positions or 10 traders knowing that some anonymous fund of a 11 large size is taking certain positions?</p> <p>12 A In my mind, that should not make a 13 difference.</p> <p>14 Q It doesn't in mine either. I'm just 15 wondering --</p> <p>16 A Right.</p> <p>17 Q -- if your answers depend on that.</p> <p>18 A No.</p> <p>19 Q They don't. Okay.</p> <p>20 And you said you're executing one by 21 threes always at the same time, thousands of 22 contracts, correct?</p> <p>23 A Yes.</p> <p>24 Q Do you know any other participants in 25 the Chicago pit who executed thousands of one by</p>
<p style="text-align: right;">Page 539</p> <p>1 impression that the traders in the pit knew your 2 positions?</p> <p>3 A That they knew -- again, I -- I would 4 disagree, and I don't think J.J. ever told me 5 that the traders know our positions.</p> <p>6 Would they know that we were the 7 trader and that positions at certain strikes 8 might be ours or certainly a large trader? 9 That's possible because they are paying 10 attention.</p> <p>11 But could a trader in the pit 12 accurately write down on a pad of paper the 13 hedged futures strategy fund portfolio? I don't 14 believe so.</p> <p>15 Q But they generally understood what 16 your strategy was, right?</p> <p>17 A Yes. After repeatedly doing one by 18 threes, they -- right.</p> <p>19 Q Right. And do you recall whether they 20 had that impression -- I'm sorry.</p> <p>21 Do you recall whether they had that 22 understanding before December 9th, 2016?</p> <p>23 A Again, I don't know for sure what 24 impression they had.</p> <p>25 In our discussions, it's certainly</p>	<p style="text-align: right;">Page 541</p> <p>1 threes all at the same time?</p> <p>2 A Well, if you mean all at the same 3 time, what I meant to say is we do all legs of 4 that spread at the same time.</p> <p>5 We don't often go in and do thousands 6 of contracts.</p> <p>7 Our trade size has been a thousand for 8 some period of time. Sometimes we do that once 9 a day; sometimes more times a day.</p> <p>10 So the short answer to your question 11 is other options traders do, perhaps not the 12 same spread, but they do volume of that size. I 13 am aware of that.</p> <p>14 Q So -- but the question is, one by 15 threes, where all legs are executed at the same 16 time through the same broker, do other -- are 17 you aware of other market disciplines that 18 engage in that pattern of trading?</p> <p>19 A No. I'm not aware of any.</p> <p>20 Q Okay. Has J.J. ever told you that are 21 there other market participants that engage that 22 same pattern of trading?</p> <p>23 A Yes.</p> <p>24 Q He has?</p> <p>25 A He has.</p>

<p>1 Q Who?</p> <p>2 A Again, he talks about a generic class</p> <p>3 of trader because it's not appropriate to talk</p> <p>4 about specific names.</p> <p>5 In other words, no one should be</p> <p>6 broadcasting to the world that hedged futures is</p> <p>7 doing the trade.</p> <p>8 So what he's mentioned to me is that</p> <p>9 banks often do the actual opposite side of the</p> <p>10 trade and -- and there's been opportunities for</p> <p>11 us to take the other side of their trade instead</p> <p>12 of going through our normal market makers.</p> <p>13 So he's certainly mentioned that --</p> <p>14 that there are oftentimes banks that do the</p> <p>15 reverse side of our trade.</p> <p>16 Q That's interesting.</p> <p>17 So as somebody who regularly is in</p> <p>18 that market, he can determine what certain other</p> <p>19 market participants are doing, correct?</p> <p>20 A He sees the trade as the same as any</p> <p>21 other trade, and sometimes we're actually on the</p> <p>22 opposite side of the same trade.</p> <p>23 Q Okay. That's helpful. I'll show you</p> <p>24 what's been marked as Exhibit 39.</p> <p>25 (SEC Exhibit No. 39 was</p>	<p>Page 542</p> <p>1 by threes had a better risk return profile.</p> <p>2 And we were contemplating going back</p> <p>3 to one by twos.</p> <p>4 So this was a common element of</p> <p>5 discussion between the two of us.</p> <p>6 Q Would replacing one by threes with one</p> <p>7 by twos be a way to reduce risk?</p> <p>8 A It can be, but it depends on how the</p> <p>9 trade is structured; how many -- what's the</p> <p>10 distance between strikes, how far away from the</p> <p>11 market it is.</p> <p>12 So it's one element of the trade that</p> <p>13 may or may not reduce risk depending on how you</p> <p>14 structure the overall trade.</p> <p>15 Q Did you have the skill and experience</p> <p>16 as of December 2016 to structure a one by two in</p> <p>17 a way that would reduce risk?</p> <p>18 A Certainly.</p> <p>19 Q Okay. I'm not concerned or asking</p> <p>20 about discussions you've had with Ms. Rios over</p> <p>21 the life of the fund.</p> <p>22 Did you have any discussions with Ms.</p> <p>23 Rios in December of 2016 about replacing one by</p> <p>24 threes with one by twos?</p> <p>25 A I don't recall specifically if we did.</p>
<p>1 marked for identification.)</p> <p>2 BY MR. SCHMIDT:</p> <p>3 Q This is an e-mail dated December 9th,</p> <p>4 2016, from Ms. Rios to you. Do you remember</p> <p>5 getting this?</p> <p>6 A Again, I don't specifically remember,</p> <p>7 but there's -- I'm certain that I did.</p> <p>8 Q Okay. So Ms. Rios suggests -- she</p> <p>9 says -- in fact, the only part of the e-mail is</p> <p>10 the subject line, right, really that has any</p> <p>11 substance to it?</p> <p>12 A Yes. That's correct. Sorry.</p> <p>13 Q She says, "I'm seeing one by twos</p> <p>14 replacing one by three in the future," correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. Do you remember her suggesting</p> <p>17 replacing one by threes with one by twos?</p> <p>18 A We had many discussions about the</p> <p>19 structure of our trades. And a fundamental part</p> <p>20 of that structure is a choice of one by two</p> <p>21 versus one by three.</p> <p>22 During the life of the fund, there was</p> <p>23 a time when -- and somewhat volatility</p> <p>24 dependent, we -- I did one by twos.</p> <p>25 Did some research that suggested one</p>	<p>Page 543</p> <p>Page 545</p> <p>1 As I mentioned, there were many discussions</p> <p>2 about many elements of the strategy. So that</p> <p>3 specific, I don't recall.</p> <p>4 Q You don't know one way or the other?</p> <p>5 A I don't know one way or the other.</p> <p>6 MR. SCHMIDT: Okay.</p> <p>7 BY MR. WASSERMAN:</p> <p>8 Q When you put on your position -- when</p> <p>9 you put on your call ratio spreads, you try to</p> <p>10 make them cash neutral, right?</p> <p>11 A Yes.</p> <p>12 Q In other words, that the revenue from</p> <p>13 selling the call short is roughly equal to the</p> <p>14 cost of buying the calls long?</p> <p>15 A That's correct.</p> <p>16 Q Sorry. That's a little redundant, but</p> <p>17 you get my point.</p> <p>18 So is the decision about whether to do</p> <p>19 a one-by-two ratio or a one-by-three ratio</p> <p>20 driven at all by whether -- by the price of the</p> <p>21 short call?</p> <p>22 A By the relative price of the short</p> <p>23 call. In other words, is it possible to</p> <p>24 construct a trade that has the same or better</p> <p>25 return profile, risk return profile, using a one</p>

<p>1 by two as opposed to a one by three?</p> <p>2 Q So, in other words, if you can't</p> <p>3 generate the -- the revenue to be cash neutral</p> <p>4 with the one by two, you could go to a one by</p> <p>5 three to generate the equal revenue?</p> <p>6 A Well, it's not as simple that because</p> <p>7 you can always generate enough revenue depending</p> <p>8 on where you place the strikes.</p> <p>9 So it's a question of are you actually</p> <p>10 taking on more risk doing a one by two as</p> <p>11 opposed to one by three, depending on how you</p> <p>12 place the strikes and where you place that</p> <p>13 option structure, the spread, relative to the</p> <p>14 market.</p> <p>15 Q Okay. And options are generally more</p> <p>16 accepted the closer they are to being in the</p> <p>17 money, right?</p> <p>18 A All else being equal, yes.</p> <p>19 Q And so for a -- sorry. Give me a</p> <p>20 second.</p> <p>21 So let's say you wanted the spread</p> <p>22 between your strikes to be 50 points. But doing</p> <p>23 a one by two at a 50-point spread wouldn't be</p> <p>24 cash neutral. It would actually cost you more --</p> <p>25 cost you more to buy -- to take the long</p>	<p>Page 546</p> <p>1 Q Actually before we go to Exhibit 44,</p> <p>2 I'm handing you SEC Exhibit 40.</p> <p>3 (SEC Exhibit No. 40 was</p> <p>4 marked for identification.)</p> <p>5 BY MR. BENSON:</p> <p>6 Q So we looked a few minutes ago at</p> <p>7 Exhibit 39, which is an e-mail from Ms. Rios to</p> <p>8 you, Mr. Walczak, right?</p> <p>9 Mr. Walczak?</p> <p>10 A Yes.</p> <p>11 Q Before -- before you read Exhibit</p> <p>12 40 --</p> <p>13 A I'm sorry.</p> <p>14 Q -- we had just asked you some</p> <p>15 questions about an exhibit marked Exhibit 39</p> <p>16 from Kimberly Rios to you with a subject line,</p> <p>17 "I'm seeing one by twos replacing one by threes</p> <p>18 in the future," right?</p> <p>19 A Yes.</p> <p>20 Q Okay. Are you aware that Ms. Rios</p> <p>21 sent you Exhibit 39 while she was on a</p> <p>22 conference call with Catalyst -- representatives</p> <p>23 of Catalyst Capital Advisors based in New York</p> <p>24 City?</p> <p>25 A No, I'm not.</p>
<p>Page 547</p> <p>1 position than to sell the short position? Let's</p> <p>2 say that's the hypothetical.</p> <p>3 A Depending on where you put it.</p> <p>4 Q I'm saying let's -- let's -- let's</p> <p>5 assume that for a 50-point difference in the</p> <p>6 strikes that you were going to be cash-flow</p> <p>7 negative on a one by two.</p> <p>8 A Okay.</p> <p>9 Q In order to be cash-flow neutral, you</p> <p>10 would have to -- you would have to make the</p> <p>11 spread narrower, right?</p> <p>12 A Or closer to the market or farther out</p> <p>13 in expiration.</p> <p>14 Q Thanks.</p> <p>15 So if you didn't want to move farther</p> <p>16 out into expiration and you didn't want to move</p> <p>17 closer to market and you didn't want to make the</p> <p>18 spread narrower, you would have to do a one by</p> <p>19 three to generate the same revenue?</p> <p>20 A Correct.</p> <p>21 MR. SCHMIDT: Let me show you what's</p> <p>22 been marked as Exhibit 44.</p> <p>23 (SEC Exhibit No. 44 was</p> <p>24 marked for identification.)</p> <p>25 BY MR. BENSON:</p>	<p>Page 549</p> <p>1 Q Are you aware that a telephone call</p> <p>2 took place between Ms. Rios and individuals at</p> <p>3 Catalyst Capital Advisors in New York regarding</p> <p>4 futures fund's risk analysis and stress testing</p> <p>5 procedures on December 9th, 2016?</p> <p>6 A I recall a number of -- excuse me -- a</p> <p>7 number of risk-related phone calls about that</p> <p>8 time during that December drawdown we had.</p> <p>9 Q And you didn't participate in all</p> <p>10 those calls, did you?</p> <p>11 A I believe I did.</p> <p>12 Q Okay. Did you participate in -- in</p> <p>13 the one on December 2016?</p> <p>14 A I don't recall.</p> <p>15 Q Well, let's look at Exhibit 40 and see</p> <p>16 if we can get some clarity on that perhaps.</p> <p>17 So Exhibit 40 is a string of two</p> <p>18 e-mails. The first is sent from Michael</p> <p>19 Schoonover, which I believe we spelled it</p> <p>20 S-c-h-o-o-n-o-v-e-r, to Kimberly Rios, copying</p> <p>21 George Amhrein, Jerry Szilagyi, and David Miller</p> <p>22 with the subject "Risk analysis/understanding of</p> <p>23 stress testing."</p> <p>24 That was Friday, December 9th, 2016,</p> <p>25 at 3:52 p.m.</p>

<p>1 You're not on that e-mail, right?</p> <p>2 A I see that.</p> <p>3 Q Okay. And in that e-mail, Mr.</p> <p>4 Schoonover says, "Hi, Kimberly. Thanks for time</p> <p>5 on the call today. We spoke after the call</p> <p>6 about trying to propose something. Are you able</p> <p>7 to send us some screen shots, slash, raw data,</p> <p>8 slash, explanation of anything you used to</p> <p>9 stress test, slash, measure the risk.</p> <p>10 I think the biggest thing we can do to</p> <p>11 make sure that the strategy risk and business</p> <p>12 risk are properly aligned is to make sure we</p> <p>13 understand how the fund measures risks and</p> <p>14 reacts to adverse events."</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Okay. Do you recall participating on</p> <p>18 the call that Mr. Schoonover references in his</p> <p>19 e-mail to Ms. Rios as reflected in Exhibit 40?</p> <p>20 A Again, I recall a number of calls in</p> <p>21 that time frame, and I participated, to the best</p> <p>22 of my knowledge, on most of them.</p> <p>23 Q Okay.</p> <p>24 A Again, if -- if there was a call that</p> <p>25 was held without my knowledge, I wasn't invited</p>	<p style="text-align: right;">Page 550</p> <p>1 organizational charts. And I did not make it a</p> <p>2 point to stay up with different</p> <p>3 responsibilities.</p> <p>4 Q Okay.</p> <p>5 A That said, Mr. Amhrein was my point of</p> <p>6 contact for risk control.</p> <p>7 Q Okay. And so looking at this e-mail</p> <p>8 from Mr. Schoonover to Ms. Rios, is it -- do you</p> <p>9 think it's peculiar or odd that Mr. Schoonover</p> <p>10 is e-mailing Ms. Rios to -- with the sentence,</p> <p>11 "I think the biggest thing we can do to make</p> <p>12 sure the strategy risk and business risk are</p> <p>13 properly aligned is to make sure we understand</p> <p>14 how the fund measures risks and reacts to</p> <p>15 adverse events"?</p> <p>16 Isn't it peculiar that he's sending</p> <p>17 that to a portfolio manager as opposed to, let's</p> <p>18 say, someone responsible for monitoring the risk</p> <p>19 of that fund?</p> <p>20 A I'm -- I'm going to guess here. I'll</p> <p>21 say two things. One is I have no idea what</p> <p>22 conversation on the phone call may have</p> <p>23 precipitated this e-mail or discussion.</p> <p>24 Q Okay.</p> <p>25 A So first and foremost, I don't really</p>
<p style="text-align: right;">Page 551</p> <p>1 to, I can't say anything about that.</p> <p>2 Q So what was George Amhrein's position</p> <p>3 at Catalyst as of Friday, December 9th, 2016?</p> <p>4 Do you remember?</p> <p>5 A He was -- I think he was called a risk</p> <p>6 advisor.</p> <p>7 Q Maybe chief risk officer?</p> <p>8 A I don't know if he was given that</p> <p>9 exact title.</p> <p>10 Q Okay. He was -- was he the person at</p> <p>11 Catalyst Capital Advisors who was responsible</p> <p>12 for monitoring risk of the futures funds?</p> <p>13 A Yes.</p> <p>14 Q No one else, right?</p> <p>15 A I don't know whether anyone assisted</p> <p>16 him.</p> <p>17 In fact, I think probably Mike</p> <p>18 Schoonover may have.</p> <p>19 So he may have had some other people</p> <p>20 assisting him, but he was the point of contact.</p> <p>21 Q Okay. And in terms of having the</p> <p>22 official -- official responsibility, it was Mr.</p> <p>23 Amhrein who had that responsibility?</p> <p>24 A I think that's correct, although I</p> <p>25 will tell you that Catalyst is not good with</p>	<p style="text-align: right;">Page 553</p> <p>1 know what he's talking about.</p> <p>2 Q Okay. And anything besides first and</p> <p>3 foremost?</p> <p>4 A My best understanding of this would be</p> <p>5 he's asking to understand how, at the portfolio</p> <p>6 level, we view and manage risk.</p> <p>7 Q Okay. And Kimberly, in response to</p> <p>8 that request, she forwards -- she forwards the</p> <p>9 e-mail to you, right?</p> <p>10 A (Nodding head.)</p> <p>11 Q And that's reflected also in Exhibit</p> <p>12 40. And she forwards it to you on Friday,</p> <p>13 December 9th, 2016, at 4:56 p.m.</p> <p>14 "Ed, see below. How in depth do you</p> <p>15 want to get with things, (charts, OptionVue, et</p> <p>16 cetera), with NY or just have us come up with</p> <p>17 adjustments for them to review."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Do you remember receiving that e-mail?</p> <p>21 A Not specifically. But --</p> <p>22 Q Do you remember if you responded to</p> <p>23 this e-mail?</p> <p>24 A That I definitely don't know.</p> <p>25 Q Do you remember having a conversation</p>

<p>1 in response to receiving this e-mail? 2 A No. 3 Q You don't remember telling Kim, Don't 4 worry about this. We've got a risk officer. 5 Have him deal with it, right? 6 A As I said, in this time frame and 7 almost any time frame, to be honest with you, I 8 don't remember specific conversations. 9 Q But it would have -- I mean, I'm -- am 10 I right that you are sure you did not say, Kim, 11 don't spend your time on this, that's George 12 Amhrein's job; have him do it? 13 A Again, I don't remember what 14 conversation I may have had. 15 Q Okay. And I'm just saying generally, 16 did you ever tell Kim, Look, any risk questions 17 that come to you, kick them over to George 18 Amhrein. You got better things to do? 19 A I don't recall ever giving her that 20 instruction. 21 Q Do you recall ever pointing questions 22 about risk to -- to George Amhrein? 23 A I don't recall specifically, but there 24 may have been occasions. 25 Q Okay. And George Amhrein, his -- his</p>	<p>Page 554</p> <p>1 anything other than Jerry mentioned to me -- Mr. 2 Szilagyi mentioned to me at some point that 3 George received compensation for introducing us. 4 Q So sitting here today, assuming that 5 I'm correct that Mr. Amhrein was paid based on 6 how fast and how large the futures fund grew 7 while he also served as the fund's primarily 8 risk officer, do you see an issue with that? 9 A Not -- not knowing the details of his 10 compensation, I can't tell you -- and not only 11 that, I can't get inside of his head to tell you 12 whether or not he'd be impacted by that. 13 Q Okay. And I wasn't -- that's fine. 14 I guess one other question: Do you 15 have travel records when you go to your other 16 properties? 17 You fly, I assume. You don't take a 18 boat? 19 A That's correct. 20 Q Okay. So I assume you have -- are you 21 a member of -- do you -- are you member of like 22 United Mileage Plus or frequent flyer mileage? 23 A Sure. A number of different airlines. 24 Sure. 25 Q So there would be ways, if we asked</p>
<p>Page 555</p> <p>1 experience, professional experience, would you 2 categorize it as being primarily risk related? 3 A I'm not familiar with his professional 4 experience. 5 Q Do you know how George Amhrein was 6 compensated from 2013 to 2015 by Catalyst 7 Capital Advisors? 8 A I'm not aware of his compensation 9 plan, no. 10 Q Did you know that it was based on 11 assets versus management in that fund? 12 A There was a point in time where very 13 causally Mr. Szilagyi mentioned to me that 14 George receives or received a finder's fee for 15 introducing or identifying me to Catalyst. 16 Q Right. 17 A I don't know the specifics of what 18 that fee was, how it was calculated, how long it 19 went or what his other compensation was. 20 Q So did -- you understood that Mr. 21 Amhrein received a finder's fee, but you didn't 22 understand -- if I hear you correctly -- that 23 that finder's fee actually was directly related 24 to how fast and how large the futures fund grew? 25 A Right. As I said, I don't know</p>	<p>Page 557</p> <p>1 for you to, you know, give us dates when you 2 were in location A or location B, right? 3 A Yes. 4 Q Okay. We'll follow up with you 5 separately on that. 6 But sitting here today, you don't 7 recall where you physically were located during 8 the month of December 2016, right? 9 A Certainly part of that time, I was in 10 Hawaii. 11 Q Right. 12 A I don't remember exactly when. 13 Q And what's the time difference between 14 Hawaii and Madison, Wisconsin? 15 A Certain times of the year, it is four 16 hours; certain times of the year, it is five 17 hours. 18 Q Okay. And we talked about how futures 19 contracts can be traded in the pits in Chicago 20 and then electronically, right? 21 A Yes. 22 Q And the majority of the futures 23 contracts of the futures fund traded were S&P 24 contracts, right? 25 A Correct. We don't trade futures</p>

<p>1 contracts routinely, though.</p> <p>2 Q I'm sorry. Options on futures?</p> <p>3 A Correct.</p> <p>4 Q What are the hours of the options on</p> <p>5 futures contracts? What are the hours of those</p> <p>6 markets?</p> <p>7 A 8:30 central to 3:15.</p> <p>8 Q Central, right?</p> <p>9 A Central, yes.</p> <p>10 QOkay. So I'm bad with math. You're</p> <p>11 probably much better at it than I am.</p> <p>12 Sitting in Hawaii, what is the -- what</p> <p>13 is that time period?</p> <p>14 A 4:30 to 11:15.</p> <p>15 QOkay. So was it your practice, when</p> <p>16 you were physically in Hawaii, to be awake and</p> <p>17 working from, I believe you said, 4:30 in the</p> <p>18 morning until 11:30 in the morning?</p> <p>19 AYes.</p> <p>20 QSo was that your practice?</p> <p>21 AYes, it was.</p> <p>22 MR. BENSON: Okay.</p> <p>23 BY MR. SCHMIDT:</p> <p>24 QDid I give you a copy of Exhibit 44?</p> <p>25 MR. ZILIAK: 44.</p>	<p>Page 558</p> <p>1 Q For the open option premium value for</p> <p>2 calls, that is triggered at six percent or</p> <p>3 greater, right?</p> <p>4 A Correct.</p> <p>5 Q And as of the morning of December 9th,</p> <p>6 the value you got was 7.21 percent, correct?</p> <p>7 A Correct.</p> <p>8 Q And so once that value -- or sorry.</p> <p>9 Once that risk parameter is triggered,</p> <p>10 the PM, which is you, right? You're the</p> <p>11 portfolio manager? You got to --</p> <p>12 A Yes.</p> <p>13 Q I'm sorry. It has to be audible for</p> <p>14 her to record it.</p> <p>15 A Yes.</p> <p>16 Q You have to reduce this ratio within</p> <p>17 24 hours, correct?</p> <p>18 A That's the suggested action on there</p> <p>19 unless the risk committee agrees otherwise, yes.</p> <p>20 QOkay. Can you go to the top of the</p> <p>21 column. Does it say action suggested or action</p> <p>22 required?</p> <p>23 AIt says action required.</p> <p>24 QDoes it mean action required?</p> <p>25 AIn practice, all of these triggers</p>
<p>1 THE WITNESS: 44?</p> <p>2 1 BY MR. SCHMIDT:</p> <p>3 Q Yeah.</p> <p>4 A I have it.</p> <p>5 MR. SCHMIDT: Did I send it down?</p> <p>6 MR. BENSON: No.</p> <p>7 BY MR. SCHMIDT:</p> <p>8 Q Okay. These are or this is -- Exhibit</p> <p>9 44 is one of the risk reports, daily risk</p> <p>10 reports that you've testified about before,</p> <p>11 right? Not this specific one, but this is one</p> <p>12 of those documents?</p> <p>13 A Yes.</p> <p>14 Q Okay. And this particular one is the</p> <p>15 daily risk report that was received the morning</p> <p>16 of December 9, 2016, correct?</p> <p>17 A Yes.</p> <p>18 Q Okay. And two of your risk factors</p> <p>19 have been triggered, right?</p> <p>20 A Yes.</p> <p>21 Q Okay. Can you tell me which two have</p> <p>22 been triggered?</p> <p>23 A It looks like the open call premium</p> <p>24 and the change in NAV or share over a week's</p> <p>25 period of time.</p>	<p>Page 559</p> <p>1 caused us to have a discussion about what's best</p> <p>2 to do next.</p> <p>3 Q So even though it says "PM," the</p> <p>4 action required is that PM reduces ratio within</p> <p>5 24 hours, it doesn't mean that the PM, meaning</p> <p>6 you, is required to reduce the ratio within 24</p> <p>7 hours?</p> <p>8 A In practice, we had a -- we typically</p> <p>9 have a discussion at the risk committee level to</p> <p>10 do that, to decide what to do.</p> <p>11 Q That -- that's not my question.</p> <p>12 So my question is: This is a list of</p> <p>13 written risk parameters, correct?</p> <p>14 A Yes.</p> <p>15 Q And it says -- it has an entire column</p> <p>16 dedicated to action required, correct?</p> <p>17 A Yes.</p> <p>18 Q The column does not say action that we</p> <p>19 are required to have a discussion about to</p> <p>20 figure out whether we want to do it, right?</p> <p>21 A Right.</p> <p>22 Q It says action required. And the</p> <p>23 action that's required for open opposition</p> <p>24 premium value calls is that the PM reduces the</p> <p>25 ratio within 24 hours, correct?</p>

<p>1 A Yes.</p> <p>2 Q It does not say the PM thinks about 3 whether to reduce the ratio within 24 hours?</p> <p>4 A Correct.</p> <p>5 Q Correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. But your testimony is, despite 8 what it actually says, that's not what you 9 actually did?</p> <p>10 A I don't recall what we did without 11 looking at the next day's report. It's very 12 possible we did reduce it.</p> <p>13 Q But that's not my question.</p> <p>14 What you just told me was your 15 practice is not to treat this as required. Your 16 practice is to look at it, to think about it, to 17 have a discussion, and then decide what to do, 18 correct?</p> <p>19 A That's the way the risk parameters are 20 treated, such that if there was a needed-to-be 21 discussion, a course of action, then we would do 22 that.</p> <p>23 In some cases, we would simply correct 24 it.</p> <p>25 Q But you don't have to?</p>	<p>Page 562</p> <p>1 Q And Mr. Amhrein is the risk officer 2 that you deal with at Catalyst regarding the 3 futures fund?</p> <p>4 A Yes.</p> <p>5 Q So can you please tell me the 6 conversations you've had with them where you 7 explain to them that the risk triggers don't 8 actually trigger required action; they just 9 trigger discussion about what to do?</p> <p>10 A All I'm describing is the practice of 11 what occurred is typically when a risk trigger 12 was hit, without time passing, there would 13 typically be a discussion about why it was hit 14 to ensure that -- that we were taking the right 15 course of action.</p> <p>16 Q I understand what the practice is.</p> <p>17 I want to know about the discussions 18 that you've had with people at Catalyst, whether 19 it's Mr. Szilagyi, Mr. Amhrein or somebody else, 20 where you told them that, when a risk trigger is 21 hit, I don't immediately take the action that's 22 on the report. It simply triggers a discussion 23 about what steps need to be taken.</p> <p>24 So what discussions have you had with 25 people at Catalyst about your practice in</p>
<p>1 A Well, we have to -- I would have to 2 unless I got approval from somebody not to, I 3 guess is my point.</p> <p>4 Q Okay. So that's different. Okay.</p> <p>5 So these risk parameters mean you have 6 to reduce it unless somebody tells you not to; 7 is that what your saying?</p> <p>8 A That's -- that's my understanding. 9 Not that they tell me not to -- or only if I 10 make a case that there's a reason not to 11 immediately take action.</p> <p>12 These -- we've always, I think, 13 articulated these as risk triggers, meaning, 14 they trigger some kind of action. Not 15 necessarily exactly what it says if the 16 circumstances require something different.</p> <p>17 Q Are you aware of materials describing 18 the futures fund that describes its risk 19 parameters as strict?</p> <p>20 A Without something in front of me, I 21 don't know.</p> <p>22 Q You don't know?</p> <p>23 Mr. Szilagyi is one of your main 24 contacts at Catalyst, correct?</p> <p>25 A Yes.</p>	<p>Page 563</p> <p>1 response to a risk trigger parameter being 2 triggered?</p> <p>3 A I -- I don't recall specific 4 discussions. I'm just telling you what the 5 practice was during the period of this drawdown. 6 We had a lot of phone calls to identify the 7 right steps to take.</p> <p>8 MR. ZILIAK: May I just say one thing 9 please?</p> <p>10 The column headers are off by one 11 column. If you look at the top, "reported by," 12 is not no. Elevation is -- these are -- your 13 columns are one off. Elevation is COE notified. 14 Action required is no, no, no, no, no all the 15 way down. No. Corrective action of the PM is 16 offset in all the rest of this. The columns 17 tops are one out of sync. So all these 18 things --</p> <p>19 MR. BENSON: If you want to make an 20 objection to the document, that's absolutely 21 fine. I think that we can probably fix the 22 record if you have a problem with the document 23 by going through each column and confirming with 24 your client that the headers actually do line 25 up. It's an easy solution. If you'd like us to</p>

<p>1 do that, I'd be happy to do. 2 MR. ZILIAK: I just feel that being -- 3 the document is being misrepresented here. 4 (Reporter clarification.) 5 MR. ZILIAK: The document -- the 6 document. That is, the description here of pick 7 any one of them. You're talking about open 8 call, open option premium. 9 So PM reduces ratio for 24 hours. 10 To my understanding that really 11 belongs under corrective action, not under 12 action required, because the action required 13 language goes to the yes or no. 14 BY MR. SCHMIDT: 15 Q Well, but -- part of the problem is 16 the way it's formatted and it was produced. 17 But you can look -- this -- we showed 18 you this yesterday. This is Exhibit 41. 19 A Okay. 20 Q Okay? 21 Did you change the columns on the 22 daily risk report? 23 A So you're telling me -- and I am 24 sorry. I should have looked more carefully 25 while you asked your questions.</p>	<p>Page 566</p> <p>1 THE WITNESS: Yes. 2 MR. BENSON: It says "division 3 exhibit," right? 4 THE WITNESS: Yes. 5 MR. BENSON: And what's the number? 6 THE WITNESS: 44. 7 MR. BENSON: Okay. So now you can 8 look at the headings. 9 BY MR. SCHMIDT: 10 Q Okay. So do you see where there's a 11 column that requires a PM to do certain things? 12 A There's a column -- 13 MR. ZILIAK: Objection. I mean -- 14 MR. SCHMIDT: Zach, please, can you 15 let me get my question out? 16 Okay. I understand what you're 17 saying. It's a formatting issue. 18 MR. ZILIAK: It's more than a 19 formatting issue. 20 MR. SCHMIDT: How do you know? 21 MR. BENSON: Let's figure this out 22 because -- let's figure it out. 23 MR. ZILIAK: All right. Okay. Please 24 proceed. I'm sorry. 25 BY MR. SCHMIDT:</p>
<p>Page 567</p> <p>1 So you're telling me that the column 2 that says PM reduces ratio in 24 hours is not 3 labeled action required? 4 Q That is not what I'm saying. 5 A I thought that's how you asked the 6 question. 7 Q This is Exhibit 41, right? You talked 8 about it yesterday. You testified at length, 9 right? 10 A Can I see it again? 11 MR. BENSON: If you look in the -- 12 THE WITNESS: Yes. 13 MR. BENSON: -- first page of the 14 document that's actually in front of you. 15 THE WITNESS: Yes. 16 MR. BENSON: Look at the real 17 exhibit -- sorry -- in front of you. 18 THE WITNESS: Which one? 19 MR. BENSON: Please hand -- the 20 document that's in your hand, please hand it 21 back to Jake. 22 THE WITNESS: Okay. 23 MR. BENSON: The document is in front 24 of you. Please turn over, and you'll see 25 there's a sticker on it.</p>	<p>Page 569</p> <p>1 Q Okay. Do you see a column on Exhibit 2 44, right? That is entitled "action required" 3 at the top? 4 A I do see that column. And I'll 5 recognize it to be shifted so that that is not 6 the proper title for that column. 7 Q Okay. So do you think the proper 8 title is corrective action? 9 A Yes. 10 Q And that's the action that is be taken 11 to correct the risk parameter trigger, right? 12 A Well, as we -- it is a suggested 13 action. If we shift these columns over, I'm 14 noticing also that the action required column 15 says no. 16 Q And you testified yesterday that that 17 is an error, a known error, that when the risk 18 parameters are triggered, that doesn't always 19 shift from no to yes. That's something that 20 you're aware of and that you don't actually look 21 at that column. You look at the metric to see 22 whether or not it is above or below the risk 23 parameter. 24 Is that your testimony under oath from 25 yesterday? Do you remember?</p>

<p style="text-align: right;">Page 570</p> <p>1 A Yes, I -- that's the -- I do compare 2 the actual value to the risk metric without 3 being concerned over whether that column says 4 yes or no in it.</p> <p>5 Q And what it's actually supposed to do 6 is, any time the risk metric is triggered, it's 7 supposed to flip from no to yes. That's what 8 you testified yesterday under oath, if you 9 remember.</p> <p>10 A All right. If I did, I did.</p> <p>11 Q Do you have a different understanding 12 sitting here today than you did yesterday?</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 MR. BENSON: So you agree with what 16 Mr. Schmidt just said?</p> <p>17 THE WITNESS: Say it again.</p> <p>18 MR. ZILIAK: Sorry. I'm sorry.</p> <p>19 MR. BENSON: So you agree with what 20 Mr. Schmidt just say, that it should have 21 switched?</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q If a risk parameter is triggered, the 24 no should switch to yes, absent some error in 25 the --</p>	<p style="text-align: right;">Page 572</p> <p>1 A I believe that's the design of the 2 report, that it should flip to yes.</p> <p>3 Q But you don't know?</p> <p>4 A I don't know. I'm not the programmer.</p> <p>5 Q Okay. So given that state of affairs, 6 tell me about -- let's just start with the risk 7 officer, Mr. Amhrein.</p> <p>8 Tell me about the discussion -- 9 because Mr. Amhrein receives these daily risk 10 reports, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. So tell me about the 13 discussions you've had with Mr. Amhrein that, 14 when a risk parameter is triggered, it doesn't 15 mean that the PM takes the corrective action 16 that's listed in the risk report.</p> <p>17 A So all I recall is a series of 18 meetings related to this drawdown where we 19 agreed, as a business, to get together and talk 20 about specific correction -- corrective actions.</p> <p>21 Q Okay. So I understand that. And 22 we'll get to that. That's not my question.</p> <p>23 A Okay.</p> <p>24 Q Not in response to this drawdown. 25 I want to know that -- what you told</p>
<p style="text-align: right;">Page 571</p> <p>1 A I think that's correct, yes.</p> <p>2 Q Okay. These are your risk parameters, 3 right?</p> <p>4 A They are.</p> <p>5 Q Okay.</p> <p>6 A Not my report.</p> <p>7 Q Okay. But you created these risk 8 parameters? I didn't create them.</p> <p>9 A That's correct.</p> <p>10 Q Okay. So I am not asking you whether 11 you agree with my risk parameters. I'm asking 12 you what your risk parameters, that you've 13 designed, are supposed to do. Okay?</p> <p>14 A Right.</p> <p>15 Q And your answer, I think, is I believe 16 so. So you don't know?</p> <p>17 A I'm sorry. I've lost your question.</p> <p>18 Q Sure.</p> <p>19 I asked, if a risk parameter is 20 triggered is this column "action required," 21 supposed to flip from no to yes. And your 22 answer is I believe so.</p> <p>23 A Yes.</p> <p>24 Q And I'm just asking whether you know 25 for sure or you don't know for sure?</p>	<p style="text-align: right;">Page 573</p> <p>1 Mr. Amhrein when he starts receiving these 2 reports because they are before the drawdown, 3 correct?</p> <p>4 A I don't recall when the drawdown was 5 other than it was, I believe, in this period of 6 time in December.</p> <p>7 Q Okay. Are you -- is it your 8 understanding that this report first was 9 received -- this kind of daily report was first 10 received when the December drawdown happened?</p> <p>11 A No. The risk triggers occurred during 12 the December drawdown.</p> <p>13 Q And that's not what I'm asking.</p> <p>14 Okay. Long before, months before the 15 December drawdown at least --</p> <p>16 A Yes.</p> <p>17 Q -- these risk reports were coming to 18 you, Mr. Amhrein, and Ms. Rios, correct?</p> <p>19 A Yes.</p> <p>20 Q On a daily basis?</p> <p>21 A Yes.</p> <p>22 Q Okay. So during that period of time, 23 all right, tell me the discussions you had with 24 Mr. Amhrein that, if any of these risk 25 parameters are triggered, I, the PM, am not</p>

<p style="text-align: right;">Page 574</p> <p>1 actually taking the action that is set forth in 2 this risk report. 3 You should know that. 4 A I had -- I had no such discussions. 5 Q No such -- with Mr. Amhrein? 6 A Correct. 7 Q Okay. Tell me all such discussions 8 you had with Mr. Szilagyi. 9 A None. 10 Q Okay. Tell me all such discussions 11 you had with anyone at Catalyst. 12 A None. 13 Q Okay. Okay. You mentioned in -- I 14 think in context of this December 9 on-or-about 15 time period that there was a risk committee that 16 was formed. Did I hear that correctly? 17 A Yes. 18 Q Okay. Do you know when that risk 19 committee was formed? 20 A I don't. 21 Q Do you know why the risk committee was 22 formed? 23 A I don't know specifically. I didn't 24 do it. 25 Q Do you know if it was formed in</p>	<p style="text-align: right;">Page 576</p> <p>1 reaction to the December 2016 drawdown? 2 A Yes. 3 Q Okay. Who was in the group? 4 A Participants I recall: George 5 Amhrein, Jerry Szilagyi, Mike Schoonover, David 6 Miller. 7 Those are the New York representatives 8 that I can recall. 9 And myself and Ms. Rios were typically 10 invited to the discussions at least relative to 11 our funds. 12 Q Okay. And I -- I called it a group. 13 I think you referred to it as a risk committee. 14 A The current incarnation of a similar 15 group is called a risk committee currently. 16 Q Do you know if it was called a risk 17 committee back in December 2016? 18 A I don't -- I don't know. 19 Q You don't know how it was referred to? 20 It could have been. It might have been 21 something else? 22 A Right. 23 Q Okay. And who told you about -- 24 well -- can I just call it the risk committee, 25 realizing it might have been called something</p>
<p style="text-align: right;">Page 575</p> <p>1 response to the drawdown that occurred in 2 December 2016? 3 A That would be my best guess. 4 Q Is it then your best guess that the 5 committee did not exist before the December 2016 6 drawdown? 7 A That I do not know. 8 Q As far as you know? 9 A As far as I know, I don't -- I don't 10 remember the first time this group was brought 11 together, and I don't know if they had met 12 previously without me. 13 Q Okay. So let's limit it to your 14 knowledge and involvement of the group. 15 I realize that, if the group existed 16 and never told you about it or never involved 17 you in it, you would know about it. 18 A Right. 19 Q Okay. So let's -- that possibility 20 we're just going to put to the side, whether it 21 preexisted in some form unbeknownst to you and 22 without your participation. 23 A Okay. 24 Q As far as you know, was the first 25 meeting or the first creation of this group in</p>	<p style="text-align: right;">Page 577</p> <p>1 else in December of 2016, so we have a point of 2 reference? 3 A Sure. 4 Q Okay. Who told you about the risk 5 committee? 6 A Again, no one told me about a risk 7 committee other than to invite me to participate 8 in the discussion. 9 Q Who invited you to participate in the 10 discussion? 11 A I think it was probably Mr. Szilagyi. 12 Q Okay. And was this a situation where 13 you and Ms. Rios are participating remotely and 14 the rest of the people are in New York? 15 A Yes. 16 Q Okay. So you didn't all meet in one 17 location? 18 A Correct. 19 Q Okay. What do you remember about that 20 first meeting, which is a teleconference from 21 your perspective? 22 A I don't remember specifics, other than 23 we had a discussion about -- in the context of 24 the drawdown of the fund, we had discussion 25 about what actions to take.</p>

<p>1 Q Okay. So it definitely occurred after 2 the December drawdown, December 2016 drawdown, 3 because you referenced it in the discussion and 4 you're figuring out options?</p> <p>5 A Yes.</p> <p>6 Q Okay. Sorry. Possibilities?</p> <p>7 A Yes.</p> <p>8 Q Okay. What are the possibilities that 9 are discussed?</p> <p>10 A Again, I don't remember a lot of 11 specifics. I remember presenting some different 12 alternatives, although I can't be very sure of 13 exactly what those were at the time. But there 14 was a lot of discussion around what to do with 15 positions in the fund, whether or not to hedge 16 positions, how -- what options or what 17 alternatives there were to hedge risk, take off 18 risk.</p> <p>19 Q Okay. So the drawdown had started?</p> <p>20 A Yes.</p> <p>21 Q And the concern was: What is the risk 22 going forward? Is there a way to reduce it? Is 23 that fair?</p> <p>24 A Sure. Yes.</p> <p>25 Q Okay. Any other concerns expressed at</p>	<p>Page 578</p> <p>1 reasonably severe drawdown.</p> <p>2 Q And what about Mr. Amhrein? What did 3 he contribute to the conversation?</p> <p>4 A I don't recall specifically.</p> <p>5 Q Do you recall anything that he 6 contributed during this time period?</p> <p>7 A I don't recall specifically what his 8 comments were in the meeting.</p> <p>9 Q So you do remember the delta-based 10 metrics suggested by Mr. Miller but nothing by 11 Mr. Amhrein?</p> <p>12 A Correct.</p> <p>13 Q Okay. And what about Mr. Schoonover? 14 What did he contribute to this discussion?</p> <p>15 A I only recall that he provided a lot 16 of analytical support, meaning, he volunteered 17 to run different scenarios to calculate -- 18 potentially begin to calculate a delta metric to 19 do some -- some other background research.</p> <p>20 Q Okay. Other than being the guy that 21 can execute the analysis, did he offer any 22 ideas?</p> <p>23 A Again, I don't remember specifics. He 24 very well may have, but I don't remember his 25 specific contribution.</p>
<p>1 the meeting?</p> <p>2 A I don't remember any others.</p> <p>3 Q And what was the -- do you remember 4 anything that Mr. Miller said?</p> <p>5 A Again, multiple phone calls. I can 6 maybe recall specific -- or I mean snippets of 7 his commentary from one phone call or another. 8 I can't refer to a specific meeting.</p> <p>9 Q Okay. Tell me what you remember as 10 his input.</p> <p>11 A His input was primarily that we needed 12 to potentially introduce a delta-based risk 13 metric into the matrix.</p> <p>14 Again, I don't -- I don't know exactly 15 when that came in, but that's -- that's how he 16 viewed options. So he was interested in -- in 17 using that kind of exposure metric.</p> <p>18 Q Okay. Anything else? Any other input 19 by Mr. Miller?</p> <p>20 A I remember his general concern over -- 21 over risk, but I don't remember specifics.</p> <p>22 Q What was his general concern over 23 risk?</p> <p>23 A The same as everyone else in the room 24 really, that we were in the middle of a</p>	<p>Page 579</p> <p>1 Q Nothing that sticks out, in your mind, 2 at all?</p> <p>3 A No.</p> <p>4 Q Okay. What about Mr. Szilagyi?</p> <p>5 A Again, I don't remember specifics 6 other than he -- he -- I would say he ran the 7 meeting in that he moderated the meeting, he 8 provided his perspective on the business and his 9 opinion on some of the comments that others 10 made. That's what I recall.</p> <p>11 Q In general, what was Mr. Szilagyi's 12 perspective and opinion at that time?</p> <p>13 A I don't remember the specifics of it.</p> <p>14 Q So nothing that he added sticks out in 15 your memory?</p> <p>16 A No.</p> <p>17 Q What about Ms. Rios?</p> <p>18 A Nothing comes to mind.</p> <p>19 Q What about your contribution to the 20 risk committee?</p> <p>21 A I recall suggesting alternatives and 22 trying to describe the pros and cons of 23 different alternative adjustments.</p> <p>24 Q What were the alternatives that you 25 suggested?</p>

<p style="text-align: right;">Page 582</p> <p>1 A I simply tried to get the group to 2 understand the techniques that we always use. I 3 think I have described some in previous 4 testimony. Buying back options, rolling options 5 forward, hedging options with other options. 6 Q Anything else other than those three? 7 A I don't recall anything else other 8 than those three. But there may very well have 9 been.</p> <p>10 BY</p> <p>11 MR. MORAN:</p> <p>12 Q So prior to December 16, with Mr. 13 Miller suggesting it, were you monitoring the 14 fund's deltas?</p> <p>15 A No.</p> <p>16 Q You were not?</p> <p>17 A And, again, I don't know -- you 18 mentioned December '16. I think we got --</p> <p>19 Q December of '16.</p> <p>20 A December of '16.</p> <p>21 Q 2016. Sorry.</p> <p>22 A Sometime in there, I think the subject 23 of delta exposure was brought up.</p> <p>24 MR. ZILIAK: By the way, I don't want 25 to ruin your flow, but we are at 2:30. I don't</p>	<p style="text-align: right;">Page 584</p> <p>1 Q Okay. So it says that, "Paul called 2 and said the phone call today is to discuss how 3 to take risk off."</p> <p>4 Paul is your introducing broker?</p> <p>5 A Yes.</p> <p>6 Q Any other Paul that that could refer 7 to?</p> <p>8 A Not that I can think of, no.</p> <p>9 Q Okay. Do you remember this phone call 10 to discuss how to take off risk?</p> <p>11 A Again, lots of phone calls during that 12 period of time. So this specific one --</p> <p>13 Q Yeah. So part of what I'm doing is 14 showing you documents that relate to a specific 15 phone call to see if it triggers your memory.</p> <p>16 A Sure.</p> <p>17 Q And your response is it does not?</p> <p>18 A It doesn't other than to confirm my 19 recollection that there were a lot of phone 20 calls.</p> <p>21 Q Okay. Ms. Rios tells you in this 22 e-mail that a one percent upmarket move is 23 equivalent to a five percent decline in NAV. Do 24 you see that?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 583</p> <p>1 know if you're reaching an end at some point.</p> <p>2 MR. SCHMIDT: Did you guys have things 3 on these particular documents?</p> <p>4 Okay. Can we go off the record?</p> <p>5 (Reporter clarification.)</p> <p>6 MR. SCHMIDT: 2:32.</p> <p>7 (A brief recess was taken.)</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q Okay. We are back on at 2:49 p.m.</p> <p>10 Mr. Walczak, same question: No 11 substantive discussions with the staff of the 12 SEC or the CFTC during the break?</p> <p>13 A No.</p> <p>14 Q Correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. So I have a couple of documents 17 to show you. This has been marked as Exhibit 18 46.</p> <p>19 (SEC Exhibit No. 46 was 20 marked for identification.)</p> <p>21 MR. ZILIAK: Thank you.</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q This is an e-mail from Ms. Rios to you 24 dated December 10th, 2016. Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 585</p> <p>1 Q Did you have a reaction to that?</p> <p>2 A I don't recall.</p> <p>3 Q Okay. Is that something that you'd be 4 concerned about?</p> <p>5 A Yes.</p> <p>6 Q Okay. Do you know what she's looking 7 at to make that determination?</p> <p>8 A I'm not sure.</p> <p>9 Q Okay. And --</p> <p>10 MR. BENSON: What tools would she have 11 available to her in Madison, Wisconsin, that 12 would allow her to come to the conclusion that a 13 one percent upmarket move is going to a five 14 percent decline in NAV?</p> <p>15 THE WITNESS: She might be looking at 16 OptionVue.</p> <p>17 MR. BENSON: Are you aware of any 18 other things that she could be looking at that 19 could provide that information.</p> <p>20 THE WITNESS: She might do a manual 21 calculation of the portfolio.</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q Do you remember around this time 24 discussing that possibility with people at 25 Catalyst in New York?</p>

<p style="text-align: right;">Page 586</p> <p>1 Again, "that possibility," meaning a 2 one percent upmarket move result in a -- or is 3 equivalent to a five percent decline in NAV of 4 the futures fund?</p> <p>5 A I believe numbers like that, if we 6 were able to confirm, were discussed on some of 7 these phone calls.</p> <p>8 Q Okay. So that concept was talked 9 about between Wisconsin and New York in this 10 time frame?</p> <p>11 A I think so.</p> <p>12 Q So Exhibit 44, if you still have it in 13 front of you, was the risk report, the daily 14 risk report, dated Friday, December 9, right?</p> <p>15 A Yes.</p> <p>16 Q Okay. So the next daily risk report 17 is Monday the 12th, correct?</p> <p>18 A Yes.</p> <p>19 Q They didn't come on the weekends?</p> <p>20 A No.</p> <p>21 Q Okay. And on Exhibit 44, the open 22 option call premium had advanced past the 23 trigger of six percent, right?</p> <p>24 A Yes.</p> <p>25 Q Okay. So I'm showing you what's been</p>	<p style="text-align: right;">Page 588</p> <p>1 Q And then the number is 8.9 percent, 2 right?</p> <p>3 A Yes.</p> <p>4 Q Okay. So within the next trading day, 5 that value had not been reduced, correct?</p> <p>6 A The value went up probably due to a 7 market movement because I'm fairly certain I 8 took some action on that Friday.</p> <p>9 Q Regardless of the action that you may 10 have taken, the ratio was not reduced, correct?</p> <p>11 A The ratios was likely reduced and then 12 subsequent market day was increased again.</p> <p>13 Q Do you know that for sure?</p> <p>14 A I don't know that for sure, but I know 15 that's happened in the past when we react and 16 adjust risk lower.</p> <p>17 Q And how would you be able to determine 18 whether or not your statement is true?</p> <p>19 I'm sorry. I didn't mean to say 20 "true." Accurate.</p> <p>21 A Sure. I guess we'd have to go back 22 and look at trades on that day.</p> <p>23 Q So you could do that; you could look 24 at the trades and determine whether or not you 25 had reduced the open option premium call ratio</p>
<p style="text-align: right;">Page 587</p> <p>1 marked as 48. 2 (SEC Exhibit No. 48 was 3 marked for identification.)</p> <p>4 BY MR. SCHMIDT:</p> <p>5 Q Okay. So the way, again, this was 6 produced and printed to format is a little 7 different.</p> <p>8 But this is the risk report for -- 9 that was received on Monday, December 12th at 10 7:30 a.m. in the morning from Manamu Solutions?</p> <p>11 A Yes.</p> <p>12 Q And that's where you got these risk 13 reports from?</p> <p>14 A Yes, Model Alpha.</p> <p>15 Q Okay. So if you go down the left side 16 at the bottom. Okay? And you can see there's a 17 point a little more than halfway down in that 18 large text box that says, "Risk open option 19 premium value calls," on the first page.</p> <p>20 A Yes.</p> <p>21 Q Okay. So if you go across that line, 22 the next thing it says is, "Less than six 23 percent" -- sorry. "Less than six percent NAV 24 net calls."</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 589</p> <p>1 to less than six percent and then a market 2 movement subsequently caused it to go up again?</p> <p>3 A Well, we could certainly see if call 4 exposure had been reduced.</p> <p>5 I don't know if we can calculate 6 intraday that number.</p> <p>7 (Reporter clarification.)</p> <p>8 BY MR. SCHMIDT:</p> <p>9 Q Model Alpha; are those terms 10 synonymous this your mind?</p> <p>11 A Yes. I guess one is the company and 12 one is the name of the software.</p> <p>13 Q Okay.</p> <p>14 BY MR. WASSERMAN: And to clarify, 15 Model Alpha is the name of software and Manamu 16 is the name of the company?</p> <p>17 THE WITNESS: I think so.</p> <p>18 BY MR. BENSON:</p> <p>19 Q Mr. Walczak, you mentioned that, with 20 regard to Exhibit 44 and Exhibit 48, you believe 21 that it's possible that you took steps to bring 22 the open option premium value of calls to below 23 less than six percent NAV at some point on 24 Friday 12-9 but by the close of trading on 12-9, 25 it had gone above that six percent threshold</p>

<p>1 again, right?</p> <p>2 A That's happened in the past so it's a</p> <p>3 possibility certainly.</p> <p>4 Q Okay. So my understanding of the</p> <p>5 procedure, the risk procedure that was in place,</p> <p>6 it was that the PM was to reduce that ratio</p> <p>7 within 24 hours. Okay?</p> <p>8 A Yeah. The action -- and I'm sorry if</p> <p>9 I wasn't clear earlier, but the action required</p> <p>10 under there was certainly to elevate -- one of</p> <p>11 the suggestion -- suggested actions was</p> <p>12 certainly to reduce it. The action required</p> <p>13 simply said we have to do something and the</p> <p>14 elevation to the risk officer in this case</p> <p>15 was -- was typically what would be accomplished</p> <p>16 for sure.</p> <p>17 You're correct in that no should flip</p> <p>18 to a yes in terms of action required, but that</p> <p>19 corrective action is not the only one that can</p> <p>20 be considered.</p> <p>21 Q Okay. So I guess my question is: Is</p> <p>22 it -- in your view, would you have complied with</p> <p>23 that policy or procedure if you intraday brought</p> <p>24 the ratio to below six percent even though, by</p> <p>25 the end of the day, it had risen above that six</p>	<p>Page 590</p> <p>1 of the second page. Do you see that of, No. 48?</p> <p>2 A Yes.</p> <p>3 Q Okay. And the five percent in one</p> <p>4 week is also still triggered, correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. And the -- to the far right of</p> <p>7 both of those, it says "PM written explanation."</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Okay. Did you provide a written</p> <p>11 explanation to anyone about why those two risk</p> <p>12 parameters got triggered?</p> <p>13 A I did not. But, again, my very recent</p> <p>14 testimony about the intent of this document is</p> <p>15 that action must be taken, we must elevate and</p> <p>16 make sure that the appropriate person is aware.</p> <p>17 So in this case, we had verbal</p> <p>18 communication and explanation of what was going</p> <p>19 on instead of written.</p> <p>20 Q Okay. So the answer is no?</p> <p>21 A The answer to?</p> <p>22 Q Did you provide a written explanation,</p> <p>23 the answer is no, right?</p> <p>24 A My answer is no.</p> <p>25 Q Okay. So let's look at Exhibit 49.</p>
<p>1 percent threshold again?</p> <p>2 A That is -- that is typically how we</p> <p>3 calculate our end-of-day basis.</p> <p>4 Q So you would have looked to end of day</p> <p>5 to determine whether you had achieved the goal</p> <p>6 of reducing the open interest percentage then,</p> <p>7 right?</p> <p>8 A Yes. If -- if that was the sole</p> <p>9 corrective action that I was going to take,</p> <p>10 which was just to bring it back somehow --</p> <p>11 Q Um-hum.</p> <p>12 A -- I would make my best effort to do</p> <p>13 that; and if the market rose, it's very possible</p> <p>14 that it would go back up again.</p> <p>15 Q And in that instance, you would not</p> <p>16 have actually achieved the corrective action</p> <p>17 that you intended, which was to have the open</p> <p>18 call interest to be below six percent at the end</p> <p>19 of trading of the subsequent day?</p> <p>20 A Correct.</p> <p>21 MR. BENSON: Thank you.</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q There's another risk parameter that is</p> <p>24 triggered which is the change in NAV, eight</p> <p>25 percent in one month. That's at -- near the top</p>	<p>Page 591</p> <p>1 (SEC Exhibit No. 49 was</p> <p>2 marked for identification.)</p> <p>3 BY MR. SCHMIDT:</p> <p>4 Q This is a risk report for the very</p> <p>5 next day, correct?</p> <p>6 A Yes.</p> <p>7 Q Same three risk parameters have been</p> <p>8 triggered? Is that -- oh, sorry. Two of the</p> <p>9 three risk parameters have been triggered?</p> <p>10 A Yes.</p> <p>11 Q Okay. So the open options premium</p> <p>12 calls still has not been reduced under six</p> <p>13 percent; is that correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. Do you know why it still hasn't</p> <p>16 been reduced to under six percent?</p> <p>17 A I believe it's likely for the same</p> <p>18 reason I've described.</p> <p>19 I'm very certain that I took</p> <p>20 corrective action on -- this was Tuesday's</p> <p>21 report -- on Monday.</p> <p>22 Q You're sure you did?</p> <p>23 A I'm certain I did.</p> <p>24 Q How are you so certain?</p> <p>25 A Because -- well, all right. I'm</p>

<p style="text-align: right;">Page 594</p> <p>1 certain because I do take these risk metrics 2 seriously, and this is now the second day. And 3 we've had a conversation over that weekend, it 4 would appear by the e-mail exhibit you've shown 5 me, around what to do about the risk metrics 6 being triggered.</p> <p>7 Q Okay.</p> <p>8 A So, I mean, again, we can check trade 9 records, but I'm very certain I took action on 10 Monday.</p> <p>11 Q And it wasn't effective to reduce the 12 ratio to under six percent, correct?</p> <p>13 A That looks to be correct, yes.</p> <p>14 QOkay. I show you what's been marked 15 as Exhibit 50.</p> <p>16 (SEC Exhibit No. 50 was 17 marked for identification.)</p> <p>18 BY MR. SCHMIDT:</p> <p>19 Q For the record, this is the daily risk 20 report for the next day, which is Wednesday 21 or -- I'm sorry -- that was received the morning 22 of Wednesday, December 14th, correct?</p> <p>23 A Yes.</p> <p>24 Q 2016?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 596</p> <p>1 Q That's what I'm trying to get at. 2 Whatever they say, they say, right?</p> <p>3 A Right.</p> <p>4 QOkay.</p> <p>5 BY MR. MORAN:</p> <p>6 Q Mr. Walczak, I have a question here. 7 In the box at the bottom of Exhibit 50, it 8 says --</p> <p>9 (Reporter interruption.)</p> <p>10 BY MR. MORAN:</p> <p>11 Q All right. In the box at the bottom 12 of Exhibit 50, on the second page, it says, 13 "Call contracts 84,750"; is that correct?</p> <p>14 A That's what it says, yes.</p> <p>15 Q And that is net sum, or is it the 16 absolute value?</p> <p>17 A I honestly don't know what that number 18 refers to.</p> <p>19 Q Okay. You still have Exhibit 49, 20 correct, from the prior date?</p> <p>21 A Yes.</p> <p>22 Q So it looks like that number is the 23 same day over day?</p> <p>24 A Yes.</p> <p>25 Q Would that indicate no change in</p>
<p style="text-align: right;">Page 595</p> <p>1 Q Okay. And the same two risk factors 2 are triggered plus another one of the change in 3 NAV factors is triggered as well, correct?</p> <p>4 A Yes.</p> <p>5 Q So this is another day where the open 6 options premium value for call has not been 7 reduced under six percent, correct?</p> <p>8 A Yes.</p> <p>9 Q Do you know why?</p> <p>10 A This one I don't understand, no. I 11 mean, again, unless the market went way up that 12 day.</p> <p>13 Q Okay. If you had taken corrective 14 actions designed to address that risk parameter, 15 it would be reflected in your trading records?</p> <p>16 A It should be, yes.</p> <p>17 Q And if your trading records show that 18 you didn't take corrective action, do you have 19 any reason to believe that those are wrong?</p> <p>20 A No.</p> <p>21 Q Or are the trading records whatever 22 they are?</p> <p>23 A No. I mean, again, without having 24 them in front of me, I can't dispute trading 25 records.</p>	<p style="text-align: right;">Page 597</p> <p>1 positions from day to day?</p> <p>2 A Again, I -- I don't know how the 3 number is calculated; so without looking at the 4 trade record, I can't say.</p> <p>5 Q Okay. How about this: What is that 6 cell supposed to calculate?</p> <p>7 A I honestly don't know. I don't use --</p> <p>8 Q That's not something that you --</p> <p>9 A The call contracts? I -- no. I mean, 10 I know what long put and short put contracts 11 are, but the call contracts, I'm not sure if 12 that's short or net or gross. I am not just 13 certain what that means. It's not something I 14 use on this report.</p> <p>15 MR. MORAN: Okay. Thank you.</p> <p>16 BY MR. SCHMIDT:</p> <p>17 Q If you wanted to check what trading 18 you did on those days --</p> <p>19 A Yes.</p> <p>20 Q -- so picture yourself back in your 21 office in Wisconsin sitting at your computer. 22 What would you do?</p> <p>23 A We have trade logs.</p> <p>24 Q On your shared drive?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 598</p> <p>1 Q Okay. Go to December 8th, December 2 9th, 12, 13, 14, to see what you did?</p> <p>3 A Yes.</p> <p>4 Q Okay.</p> <p>5 BY MR. BENSON:</p> <p>6 Q Are those trade logs available today?</p> <p>7 A I don't have my computer with me.</p> <p>8 Q You can find out, though, one way or 9 another?</p> <p>10 A I might be able to, depending on if 11 Daniel and Kimberly are still in the office.</p> <p>12 Q Right. I'm not saying today. I'm 13 saying you -- you could answer the question?</p> <p>14 BY MR. SCHMIDT:</p> <p>15 Q Meaning that they haven't disappeared 16 or been deleted?</p> <p>17 A Correct.</p> <p>18 Q I think that was --</p> <p>19 A I think so. I mean, I haven't gone 20 back to check those, but they should be there.</p> <p>21 Q Okay.</p> <p>22 A Catalyst in New York has them, if I 23 don't.</p> <p>24 Q I'm going to show you what's been 25 marked as SEC Exhibit 54.</p>	<p style="text-align: right;">Page 600</p> <p>1 significant drawdown. We are not talking about 2 normal run-of-the-mill suggestions --</p> <p>3 A Yes.</p> <p>4 Q -- she was giving you?</p> <p>5 And whether she called it "stop the 6 bleeding" or "mitigate the losses," or whatever 7 it is, you've now had four straight trading days 8 where your risk parameters have been triggered 9 and you haven't been able to reduce them to the 10 appropriate level, correct?</p> <p>11 A Yes.</p> <p>12 Q Okay. And this is later in the day on 13 the fourth day in a row where that's happened?</p> <p>14 A This is actually early in the day, I 15 think.</p> <p>16 Q Oh, is this early in the day?</p> <p>17 A It's -- it's essentially Tuesday 18 night, it looks like.</p> <p>19 Q Oh, she's working late. Okay. So 20 three straight days where the risk parameters 21 have been triggered --</p> <p>22 A Yes.</p> <p>23 Q -- and they're actually subsequently 24 triggered the next day as well?</p> <p>25 A Right.</p>
<p style="text-align: right;">Page 599</p> <p>1 (SEC Exhibit No. 54 was 2 marked for identification.)</p> <p>3 BY MR. SCHMIDT:</p> <p>4 Q This is an e-mail from Ms. Rios to you 5 dated December 14, 2016, which is Wednesday. 6 This is later in the day then when you received 7 the daily risk report we just looked at, 8 correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. And this e-mail has a proposal 11 on how you might stop the bleeding. Do you see 12 that?</p> <p>13 A Yes.</p> <p>14 Q Okay. Do you remember getting this?</p> <p>15 A No.</p> <p>16 Q Do you remember Ms. Rios suggesting to 17 you ways that you could stop the bleeding in 18 December of 2016?</p> <p>19 A I think "stop the bleeding" is a -- is 20 a -- a little bit of a -- I don't know -- an 21 emotional short of term. But she and I 22 regularly collaborated on adjustment option, 23 trading options and so forth. So she has 24 certainly suggested many things to me.</p> <p>25 Q Okay. But we're talking about a</p>	<p style="text-align: right;">Page 601</p> <p>1 Q Okay. So this is not a normal 2 occurrence?</p> <p>3 A Right.</p> <p>4 Q Okay. So do you remember -- and, 5 again, I'm not interested in -- in the normal 6 course, from time to time, you and Ms. Rios had 7 discussions about all kind of things.</p> <p>8 I'm asking in context of the December 9 drawdown where we just looked at the daily risk 10 reports. I want you focus on that time period.</p> <p>11 A Sure.</p> <p>12 Q Did Ms. Rios suggest a way 13 specifically, although not ideal, buying 14 something like end of month December 2280 in a 15 substantial amount to help mitigate losses?</p> <p>16 A Yes. I mean, it's here in the e-mail. 17 So clearly she suggested it.</p> <p>18 Q What was your response?</p> <p>19 A I don't recall what my response was. 20 I may have followed her suggestion. I 21 may have countered with a different suggestion. 22 I'm just not sure. That would be the nature of 23 our discussion regardless of whether it was in 24 drawdown or routinely.</p> <p>25 Q Okay. Other than the fact that it's</p>

<p style="text-align: right;">Page 602</p> <p>1 in this e-mail, you have no recollection of her 2 ever making this suggestion to you? 3 A No. Again, we've had lots of 4 conversations: Drawdown, not drawdown, lots of 5 trading suggestions. Nothing about this 6 particular strike or expiration sticks out in my 7 mind.</p> <p>8 Q Okay. 9 25 10 BY MR. BENSON: 11 Q So you pointed out that Exhibit 54 was 12 actually sent to you basically on late Tuesday 13 night, early Wednesday morning, right? 14 A Yes. 15 Q Are you aware that the futures fund 16 lost about four percent on Wednesday, the 14th 17 of December? 18 A I don't recall that it did so on 19 Wednesday. 20 Q So we can look at that by -- perhaps 21 I'm wrong, or -- you know, it had just lost -- 22 it had just lost four percent on -- on the 23 Tuesday that she sent that e-mail? 24 A Yes, that -- that I believe. 25 Q So in terms of --</p>	<p style="text-align: right;">Page 604</p> <p>1 Q The first one is marked CFTC Exhibit 2 2, and it's titled "Daily HFXAX Prices." This 3 is data -- 4 (Reporter clarification.) 5 BY MR. WASSERMAN: 6 Q This is data CFTC staff has pulled 7 from publicly available data on the Internet, 8 (indiscernible) finance. 9 CFTC 3, which I'm also going to put in 10 front of, is titled "Daily S&P Prices." 11 So like I said, these are documents 12 that CFTC staff has generated, and I just want 13 to put them in front of you for reference for 14 our discussion over the next few minutes. 15 CFTC Exhibit 2, again, is the daily 16 prices of the futures fund going from about 17 October of 2016 through February 2017 -- 18 actually March 2017. Excuse me. 19 And the Daily S&P Prices has the daily 20 open and close high-low and percent change for 21 the S&P index from December 2016 through March 22 of 2017. 23 Do you see those two documents? 24 A Yes. 25 MR. ZILIAK: And I apologize. Do you</p>
<p style="text-align: right;">Page 603</p> <p>1 A Which by the way, accounts for the 2 Tuesday open option premium. That suggests to 3 me, without looking at a chart, that there was a 4 significant upside move on Tuesday. 5 Q Right. But you had kind of said that 6 the "stop the bleeding" was emotional, like was 7 an emotional reaction. 8 Four percent in one day, that's a 9 meaningful drawdown in one day? 10 A Absolutely. I don't mean to minimize 11 the seriousness of the situation. 12 Q Okay. I'm just suggesting that, for 13 me, that was a little bit of an emotional way to 14 characterize it. 15 Okay. You would have characterized it 16 differently? 17 A Yes, as in a severe drawdown. 18 BY MR. WASSERMAN: 19 Q Mr. Walczak, I'm going to put a bunch 20 of exhibits in front of you that I have marked 21 CFTC exhibits. 22 (CFTC Exhibit Nos. 2 and 3 23 were marked for 24 identification.) 25 BY MR. WASSERMAN:</p>	<p style="text-align: right;">Page 605</p> <p>1 have copies for counsel? 2 MR. WASSERMAN: I do. I'm sorry. 3 MR. ZILIAK: I'm sorry. We have -- 4 that's 2. Do you have 3? 5 MR. WASSERMAN: I am getting them. My 6 hands can only move so fast. 7 MR. ZILIAK: Understood. Thank you. 8 (CFTC Exhibit Nos. 4A and 4B 9 were marked for 10 identification.) 11 BY MR. WASSERMAN: 12 Q The following document has been marked 13 CFTC Exhibit 4A, Mr. Walczak. 14 Mr. Walczak, do you recognize document 15 four -- document marked Exhibit 4 -- CFTC 4A? 16 A Sure. It's an e-mail. And, again, I 17 don't look at this saying, oh, I remember this 18 specific e-mail, but certainly it's sent to me 19 by Daniel in response to something I asked him 20 to do. 21 Q And the e-mail -- the subject line of 22 the e-mail is "Positions by FCM," correct? 23 A Yes. 24 Q And that document is Bates stamped 25 Catalyst 00050190446 for the record.</p>

<p style="text-align: right;">Page 606</p> <p>1 I'm going to hand you what's been 2 marked CFTC Exhibit 4B which is Bates stamped 3 Catalyst 0050190447. 4 Because of the way it's been 5 introduced, it's our understanding that it's the 6 attachment to that e-mail that's marked Exhibit 7 4A today.</p> <p>8 Do you recognize CFTC Exhibit 4B?</p> <p>9 MR. ZILIAK: I apologize. Can I ask 10 you to repeat? Never mind. I see it now.</p> <p>11 BY MR. WASSERMAN:</p> <p>12 Q So the way I've given this to you, 13 this is an example -- another example of a 14 document that we've produced in native format. 15 It was an Excel -- it was produced as an Excel 16 sheet. The Excel sheet didn't have the Bates 17 stamp on it.</p> <p>18 So the only revision that CFTC staff 19 made to the document was to put the Bates 20 stamp -- to type the Bates stamp in the header 21 of the document.</p> <p>22 A Okay.</p> <p>23 Q No other -- the actual data within the 24 boxes has been unaltered in CFTC 4B.</p> <p>25 Do you recognize this document?</p>	<p style="text-align: right;">Page 608</p> <p>1 long call positions in that expiration. 2 Q I'm glad you clarified that. 3 So the way your positions are put on 4 at inception are that you have long calls at a 5 series of strike levels and then three times as 6 many short calls at a higher series of strike 7 levels, correct?</p> <p>8 A That's typical, yes.</p> <p>9 Q And sometimes after the positions are 10 put on, later on, as an additional hedge, you -- 11 you put some -- you go long some additional 12 calls even higher than those short calls, right?</p> <p>13 A That's correct.</p> <p>14 Q And so when you say that -- that the 15 first block of entries represents some of your 16 long call positions, you're referring to the 17 fact that you have other long call positions 18 above the short call positions for the February 19 expiry, correct?</p> <p>20 A Correct.</p> <p>21 Q So taking a moment to review the 22 entirety of this spreadsheet, this spreadsheet 23 shows the fund's positions in the third week 24 February expiry and the end-of-month February 25 expiry, correct?</p>
<p style="text-align: right;">Page 607</p> <p>1 A I've seen documents like this before, 2 sure.</p> <p>3 Q What is it?</p> <p>4 A It's a -- as you suggested in 5 spreadsheet format, the fund's positions. This 6 particular sort is actually not by FCM, which is 7 what Daniel sent me. But, again, that's just a 8 sort for the --</p> <p>9 Q It's actually sorted by contract, 10 right?</p> <p>11 A It looks that way. It looks by 12 expiration period.</p> <p>13 Q Right. So the first block of entries 14 is the fund's positions in the S&P third week 15 February options, correct?</p> <p>16 A Yes.</p> <p>17 Q And more specifically, the first block 18 before the blank row is the fund's long 19 positions in third week of February expiry 20 options, correct?</p> <p>21 (Reporter clarification.)</p> <p>22 BY MR. WASSERMAN:</p> <p>23 Q Is that correct, Mr. Walczak?</p> <p>24 A There are -- you're correct that, 25 before the first space, there are some of the</p>	<p style="text-align: right;">Page 609</p> <p>1 A Correct.</p> <p>2 Q And in both of those expiries, as we 3 have just described, you have some low long 4 calls, some higher short calls, and some even 5 higher long calls, right?</p> <p>6 A Correct.</p> <p>7 Q Of those three categories of 8 positions, which positions lose value if the 9 market goes up?</p> <p>10 A Which positions lose value if the 11 market goes up?</p> <p>12 Q Yes.</p> <p>13 A All else being equal, all of the 14 positions will increase in price as the market 15 goes up.</p> <p>16 Q Right, but it's the -- it's the short 17 positions that cause the fund to lose money; not 18 the long positions in the event the market goes 19 up, correct?</p> <p>20 A Yes.</p> <p>21 Q So the exposure, so to speak, rests in 22 the short positions?</p> <p>23 A Yes. Again, offset by the gains and 24 longs.</p> <p>25 Q Understood. But the longs themselves</p>

<p style="text-align: right;">Page 610</p> <p>1 actually increase in value and are actually -- 2 I'm sorry. 3 The longs increasing in value is 4 beneficial to the fund as opposed to the shorts 5 increasing in value being detrimental to the 6 fund? 7 A Yes. 8 Q I have to be very precise here. It 9 takes a little time. 10 Okay. One moment please. 11 (CFTC Exhibit Nos. 5A and 5B 12 were marked for 13 identification.) 14 BY MR. WASSERMAN: 15 Q The next document I'm giving to you is 16 marked CFTC Exhibit 5A. And that's Bates stamp 17 Catalyst 0050154655. 18 And I'm also going to give you CFTC 19 Exhibit 5B. 20 MR. ZILIAK: I apologize. I may have 21 misheard. Could you please read back that Bates 22 number? 23 THE REPORTER: 005014655. 24 MR. WASSERMAN: No, it's 0154665. 25 MR. ZILIAK: Thank you.</p>	<p style="text-align: right;">Page 612</p> <p>1 Q What does that column mean? 2 A That column expresses the delta -- the 3 overall delta of the portfolio. 4 (Reporter clarification.) 5 BY MR. WASSERMAN: 6 Q What does overall delta of the 7 portfolio mean? 8 A I think, as he's expressed it, he's 9 expressed it in a percentage, but I believe what 10 that would mean is that it's -- the -- the delta 11 of the fund relative to movement in the S&P is 12 3.55 or 355 percent. 13 Q So you're referring to the cell right 14 under where it says "delta" on Exhibit 5B where 15 it says "Negative 355 percent," correct? 16 A Yes. 17 Q And your understanding is that a delta 18 of negative 355 percent means that for every one 19 percent movement in the S&P, the fund is going 20 to move three and a half percent in the other 21 direction? 22 A Yes. 23 (CFTC Exhibit Nos. 6A and 6B 24 were marked for 25 identification.)</p>
<p style="text-align: right;">Page 611</p> <p>1 BY MR. WASSERMAN: 2 Q Exhibit 5B is a spreadsheet, again, 3 produced in native format where the CFTC staff 4 has put the Bates stamp at the top which is 5 Catalyst 0050154666. 6 Mr. Walczak, do you recognize these 7 two documents? 8 A I have seen the spreadsheet, yes. 9 Q Okay. Exhibit 5A is an e-mail dated 10 January 30th from Michael Schoonover to you 11 among others that reads, "Here's the exposure 12 summary spreadsheet that I put together." 13 (Reporter clarification.) 14 BY MR. WASSERMAN: 15 Q On or about January 30th, did Michael 16 Schoonover start to send you these exposure 17 summary spreadsheets? 18 A Yes. 19 Q And, thereafter, did he send these on 20 a daily basis updated with -- with new data? 21 A I believe so, yes. 22 Q You'll notice on Exhibit 5B there's a 23 column four from the right labeled "Delta." Do 24 you see that? 25 A I see that, yes.</p>	<p style="text-align: right;">Page 613</p> <p>1 BY MR. WASSERMAN: 2 Q I'm giving you a document marked 3 Exhibit 6A, CFTC Exhibit 6A. It's Bates stamped 4 Catalyst 0050183449. 5 A Yes. 6 Q Exhibit 6B is Catalyst 0050183450. 7 Again, CFTC staff has added the Bates stamp. 8 Otherwise it's as it was produced. 9 A Yes. 10 Q That was 6B that I just gave you, 11 right? 12 MR. ZILIAK: Yes. 13 (CFTC Exhibit No. 7 was 14 marked for identification.) 15 BY MR. WASSERMAN: 16 Q CFTC Exhibit 7, Bates stamped Catalyst 17 0050190473. 18 MR. BYLINA: Sam, I'm sorry. Which 19 one is this? 20 MR. WASSERMAN: This is CFTC 7. 21 (CFTC Exhibit Nos. 8 and 9 22 were marked for 23 identification.) 24 BY MR. WASSERMAN: 25 Q And two of these -- I apologize. CFTC</p>

<p style="text-align: right;">Page 614</p> <p>1 Exhibit 8, Catalyst 0050194445 and CFTC Exhibit 2 Catalyst 0050197444.</p> <p>3 MR. ZILIAK: So, Sam, I presume 4 it's -- 6B is the first of the two?</p> <p>5 MR. WASSERMAN: I'm going to explain 6 in a second.</p> <p>7 MR. ZILIAK: Sorry. Of course.</p> <p>8 BY MR. WASSERMAN:</p> <p>9 Q Mr. Walczak, looking back at Exhibit 10 6A.</p> <p>11 A Okay. 6A.</p> <p>12 Q It appears to be an e-mail from Jeremy 13 O'Keefe to you among others with the subject 14 line "Trade Confirm Final on February 9th, 15 2017."</p> <p>16 Was it Jeremy's practice to send you a 17 confirmation of the trades that had been 18 executed on the fund's behalf at the end of each 19 day?</p> <p>20 A Yes.</p> <p>21 Q Looking at Exhibit 6B, does this 22 appear to be that confirm from February 9th?</p> <p>23 A Yes.</p> <p>24 Q And, Zach, to answer your question, 25 it's our understanding that 6B is the attachment</p>	<p style="text-align: right;">Page 616</p> <p>1 Q Okay. Okay. Mr. Walczak, do you -- I 2 believe a moment ago or a few moments ago you 3 were testifying about some conversations at the 4 end of January that you had about adding 5 additional risk metric to your risk parameters, 6 correct?</p> <p>7 A Well, if are -- are you referring to 8 Michael Schoonover documents?</p> <p>9 Q No. I think maybe I'm mistaken. I'll 10 strike that.</p> <p>11 There was a day towards the end of 12 January when the fund suffered a few percentage 13 points loss in response to a much smaller 14 percent move in the S&P, right?</p> <p>15 A That I don't remember at all.</p> <p>16 Q Okay. Do you recall at the end of 17 January -- but you do recall at the end of 18 January starting to receive exposure summaries 19 from Mike Schoonover, correct?</p> <p>20 A Yes. Yes.</p> <p>21 Q What was the cause of -- of your 22 beginning to receive those exposure summaries?</p> <p>23 A We wanted to evaluate the items on 24 this sheet against fund performance and against 25 our other risk metrics.</p>
<p style="text-align: right;">Page 615</p> <p>1 to 6A.</p> <p>2 MR. ZILIAK: Well, there are two 3 attachments, but there -- there's two 4 attachments to 6A.</p> <p>5 MR. WASSERMAN: No. There's no 6C. 6 It's just -- there's 7.</p> <p>7 MR. ZILIAK: On 6A when it lists 8 attachments, it lists two files.</p> <p>9 MR. WASSERMAN: I'm sorry. I see what 10 you're saying. The face of the e-mail lists 11 attachments as Catalyst Confirm 29 XLSX and 12 Commodity Confirm 29 17 XLXS. I have not 13 printed out the commodity confirm.</p> <p>14 BY MR. WASSERMAN:</p> <p>15 Q Mr. Walczak, can you confirm that 6B 16 is the confirm for hedged futures and not for 17 hedged commodity?</p> <p>18 A Yes.</p> <p>19 MR. WASSERMAN: Okay. Exhibits 7, 8 20 and 9, Zach, also come with cover e-mails, but I 21 have not given them in the interest of reducing 22 the paper in front of everybody, which is 23 already voluminous.</p> <p>24 MR. ZILIAK: Thank you.</p> <p>25 BY MR. WASSERMAN:</p>	<p style="text-align: right;">Page 617</p> <p>1 These were some items that had been 2 discussed by the risk committee and proposed, 3 and our conclusion was that we should monitor 4 how they perform against the fund's behavior 5 before putting them into place.</p> <p>6 Q Had something prompted your decision 7 to do that?</p> <p>8 A That was really -- it began with our 9 discussions in the December of 2016 drawdown. 10 As I mentioned, I recall at some point in that 11 period David Miller suggested that we start 12 using some of these metrics which we had not 13 used before.</p> <p>14 Q Okay. And by February 1st, you 15 cleared out all your January positions, correct, 16 by definition?</p> <p>17 A Yes.</p> <p>18 Q Okay. So on February 1st, the fund is 19 sitting with positions in the third-week 20 February expiry, the end of February expiry, 21 correct?</p> <p>22 A Yes.</p> <p>23 Q And maybe some positions in March, 24 correct?</p> <p>25 A And possibly April. But sure.</p>

<p style="text-align: right;">Page 618</p> <p>1 Q Looking back at Exhibit -- excuse 2 me -- 4B, does that reflect -- refresh your 3 recollection as to whether the fund had any 4 positions in April?</p> <p>5 A 4B?</p> <p>6 Q Whether on February -- as of February 7 10th the fund had any positions in April expiry 8 options?</p> <p>9 A Right. So which exhibit did you -- 10 Q I'm on 4B.</p> <p>11 A 4B. That was my question.</p> <p>12 Q And, again, my question is: Does 13 Exhibit 4B refresh your recollection as to 14 whether as of February 10th, which is the date 15 you received 4B, the fund had any positions in 16 April expiry options?</p> <p>17 A There are none on the sheet. So 18 apparently at that point we did not.</p> <p>19 Q Okay. Is it -- what's your memory 20 on -- on or about February 10th of whether you 21 had April expiry options?</p> <p>22 A Well, again, the reason I raise that 23 question is my memory tells me that at some 24 point in February we did put on April positions.</p> <p>25 Q Okay. But the vast majority of your</p>	<p style="text-align: right;">Page 620</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 MR. SCHMIDT: Can I ask one question, 4 Sam?</p> <p>5 MR. WASSERMAN: Sure.</p> <p>6 BY MR. SCHMIDT:</p> <p>7 Q When we had asked before about your 8 trading in December, and you said you'd have to 9 go back and check?</p> <p>10 A Yes.</p> <p>11 Q Obviously this is February, but is 12 this the document that you would go back and 13 check except for December 2016?</p> <p>14 A Yes.</p> <p>15 Q These are the ones you have saved --</p> <p>16 A Yes.</p> <p>17 Q -- locally?</p> <p>18 A Yes.</p> <p>19 BY MR. WASSERMAN:</p> <p>20 Q The document I'm handing you now is 21 marked CFTC 11A.</p> <p>22 (CFTC Exhibit Nos. 11A was 23 marked for identification.)</p> <p>24 BY MR. WASSERMAN:</p> <p>25 Q It's Bates stamped Catalyst</p>
<p style="text-align: right;">Page 619</p> <p>1 positions at the beginning of February were in 2 the February expiries, correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. And on February -- I'm sorry. 5 On -- sorry. Strike that.</p> <p>6 Do you recall whether the fund engaged 7 in any trading between February 1st and February 8 8th?</p> <p>9 A I do recall, in fact, from prior 10 testimony months ago that there was a period of 11 time no trading occurred.</p> <p>12 Q Do you recall specifically what that 13 period was?</p> <p>14 A It was early in February.</p> <p>15 Q Approximately the first week in 16 February?</p> <p>17 A Somewhere in that time frame, right.</p> <p>18 Q CFTC Exhibit 10 which I believe we 19 also showed you back in October is the trade 20 blotter from February.</p> <p>21 (CFTC Exhibit No. 10 was 22 marked for identification.)</p> <p>23 BY MR. WASSERMAN:</p> <p>24 Q And this spreadsheet does not reflect 25 any trading prior to February 29th, 2017,</p>	<p style="text-align: right;">Page 621</p> <p>1 0050189486. And 11B, which is the attachment to 2 that e-mail, Bates stamp Catalyst 0050189487. 3 (CFTC Exhibit No. 11B was 4 marked for identification.)</p> <p>5 THE WITNESS: If there is a point that 6 is better for you, I'm happy to take a restroom 7 break.</p> <p>8 MR. WASSERMAN: We can take five 9 minutes now.</p> <p>10 Jake controls the record so if it's 11 okay with Jake.</p> <p>12 MR. SCHMIDT: That's totally fine. 13 We are off the record at 3:38 p.m. 14 (A brief recess was taken.)</p> <p>15 MR. SCHMIDT: We are back on the 16 record at 3:45 p.m.</p> <p>17 Mr. Walczak, during the break, no 18 substantive discussions with the staff of the 19 SEC or CFTC; is that correct?</p> <p>20 THE WITNESS: That's correct.</p> <p>21 MR. SCHMIDT: Okay.</p> <p>22 BY MR. WASSERMAN:</p> <p>23 Q Mr. Walczak, turning your attention to 24 Exhibit 11A and 11B.</p> <p>25 A Okay.</p>

<p style="text-align: right;">Page 622</p> <p>1 Q These are -- this is the exposure 2 summary that Michael Schoonover sent you on 3 February 10th, correct? 4 A Yes. 5 Q In the morning of February 10th? 6 A Yes. 7 Q And it was his practice -- starting on 8 January 30th, it was his practice to do this on 9 a daily basis, right? 10 A That's correct. 11 Q And as reflected in the trade blotter, 12 from February 1st to February 8th, you did not 13 enter into any trades for the fund, right? 14 A Correct. 15 Q On -- in those first days of February, 16 you are noticing the delta exposure of the -- 17 sorry -- the delta of the portfolio increasing, 18 correct? 19 A During those first days of trading, I 20 noticed the delta of the portfolio to fluctuate 21 from day to day. And recall the context in 22 which this delta is being used. 23 It's being recorded to provide some 24 familiarity for me and others about how the fund 25 behaves relative to that delta calculation. So</p>	<p style="text-align: right;">Page 624</p> <p>1 February 8th and for 97 on February 9th, 2 correct? 3 A Correct. 4 Q So there's a pretty dramatic increase 5 from the February 1st level to the February 9th 6 level, correct? 7 A That is correct, and the other thing 8 to notice relative to my previous testimony on 9 what delta means is the funds performance was 10 fairly widely divergent from what would have 11 been predicted by the delta number during that 12 period of time. 13 That was my observation as we started 14 to get accustomed to what it should do. 15 Q The -- this exposure summary that you 16 received every -- every day starting on January 17 30th from Michael Schoonover also fills in on 18 the left-hand side the expected return based on 19 the delta number? 20 A Yes. 21 Q And the actual return, correct? 22 A Yes. 23 Q And, for example, on February 3rd, the 24 expected return is -- of the fund is negative 25 2.45, and the actual return is negative 2.36.</p>
<p style="text-align: right;">Page 623</p> <p>1 we are not currently using it as a risk metric, 2 simply as a -- on a trial observation basis -- 3 Q Yeah. I'm not asking how you're using 4 it. 5 I'm just asking -- well, I first ask 6 you to confirm that from January 31st through 7 February 10 that that delta number is steadily 8 increasing, not fluctuating, right? 9 A Well, I would characterize the delta 10 as going from 355 down to 330, holding at 330, 11 rising slightly to 337, and then beginning to 12 climb. 13 Q I'm sorry. I wasn't -- I wasn't 14 precise enough. 15 From February 1st through February 16 6th, the delta is increasing, correct, from 330 17 to -- from negative 330 to negative 470, 18 correct? 19 A It is -- it is higher on February 6th 20 than it was on January 31st. In between it was 21 lower. 22 Q And then on February 7th, it declined 23 slightly to negative 442, right? 24 A Correct. 25 Q And then it increases again to 468 on</p>	<p style="text-align: right;">Page 625</p> <p>1 Would you characterize that as wildly 2 divergent? 3 A On that particular day -- 4 Q Just -- I'm sorry. Go ahead. 5 A On that particular day, they line up. 6 On other days, they are actually directionally 7 opposite so that the delta number, for example, 8 on February 1st suggests that the fund should 9 lose money when, in fact, it gained almost 40 10 basis points. That's what I was referring to. 11 Q On -- on February 6th, the expected 12 return for the portfolio is one percent and the 13 actual return is 1.45, right? 14 A Correct. So roughly 45 percent 15 difference in expected versus actual return. 16 Q .45 percent -- 17 A But -- 18 Q -- portfolio value? 19 A Half is much greater than what's 20 predicted. 21 Q And on February 9, the prediction is 22 negative 2.86 percent and -- I'm sorry. The -- 23 and the actual return is negative 3.44, right? 24 A Yes. 25 Q So there are circumstances in which</p>

<p style="text-align: right;">Page 626</p> <p>1 the -- so -- so -- so -- in which the expected 2 return is not wildly divergent from the actual 3 return?</p> <p>4 A Well, as I said, in each of these 5 cases, if you look at the magnitude, you're -- 6 you're talking about 20, 30, 50 percent 7 different expected return versus actual.</p> <p>8 In other words, the difference, for 9 example, between an 8 percent drawdown and a 12 10 percent drawdown.</p> <p>11 Q During this time period, specifically 12 February 1st to February 8th, you're also 13 looking at OptionVue, right?</p> <p>14 A Correct.</p> <p>15 Q And OptionVue is the software that 16 you're referring to on the call we played before 17 where you can model how changes in the 18 underlying S&P index will affect the portfolio, 19 right?</p> <p>20 A Yes.</p> <p>21 Q And as you stated on the call we 22 played before, you would model out what would 23 happen to the portfolio if the S&P were up five 24 percent and if the S&P were down five percent 25 over various time frames, right?</p>	<p style="text-align: right;">Page 628</p> <p>1 from February 1st to February 8? 2 A I looked at it, not every day, and I 3 think that's also in my prior testimony because 4 there's really no need to look. The expiration 5 graph doesn't change, and that's what I'm 6 looking at.</p> <p>7 As you pointed out, the bulk of the 8 fund's positions were in very nearby 9 expirations.</p> <p>10 Q But you looked at OptionVue at least 11 once --</p> <p>12 A Yes.</p> <p>13 Q -- from February 1st to February 8th?</p> <p>14 A Yes.</p> <p>15 Q Would you say you looked at it at 16 least three times?</p> <p>17 A Probably three times, sure.</p> <p>18 Q Any more than that?</p> <p>19 A I don't -- I can't recall exactly, but 20 I would tell you, again, the expiration graph 21 doesn't change. So there's not a lot of need to 22 look at the same information.</p> <p>23 Q And what do you recall of those three 24 times you looked at OptionVue during that 25 period?</p>
<p style="text-align: right;">Page 627</p> <p>1 A Yes.</p> <p>2 Q What was OptionVue showing you about 3 how the movements in the S&P would affect the 4 portfolio in this February 1st to February 8th 5 time period?</p> <p>6 A Well, if you recall also from my 7 previous testimony, I suggested that essentially 8 I turn OptionVue off as we come into roughly a 9 two-week window around expiration period and 10 by -- excuse me -- by turning it off, what I 11 mean is the five and ten percent intervals tend 12 not to be appropriate to evaluate very, very 13 nearby options movement simply because they 14 don't -- they don't have the time to experience 15 a five or ten percent move.</p> <p>16 For example, in that time frame in 17 February, a -- in fact, what actually occurred 18 during this week was a three-sigma move, and it 19 was two and a half percent.</p> <p>20 So -- so during that period of time, I 21 will look at OptionVue, but I'm essentially 22 looking at the expiration graph and making my 23 decisions on a very short term day-to-day time 24 frame on nearby expiring options.</p> <p>25 Q So were you not looking at OptionVue</p>	<p style="text-align: right;">Page 629</p> <p>1 A I recall noticing where my breakeven 2 point was on those expiring options, and if I 3 recall correctly, I used that as kind of a 4 trigger point in addition to the risk management 5 metrics in terms of when I would need to adjust 6 those positions.</p> <p>7 Q Okay. What was OptionVue telling you 8 during that period about what would happen to 9 the value of the portfolio -- strike that.</p> <p>10 OptionVue would -- part of the 11 OptionVue graph would tell you -- sorry. Let me 12 take a third stab at this.</p> <p>13 The X axis of the OptionVue graph is 14 movement in the S&P, right?</p> <p>15 A Yes.</p> <p>16 Q And so in the middle of that X axis 17 is -- represents a zero percent move in the S&P, 18 correct?</p> <p>19 A Well, it's not necessarily centered 20 there, but current market price.</p> <p>21 Q Current market price is -- is in the 22 middle of the X axis?</p> <p>23 A Again, not always. That's why I just 24 say it's current market price.</p> <p>25 Q And -- and then the X axis -- the</p>

<p style="text-align: right;">Page 630</p> <p>1 numbers on the X axis move up in increments? In 2 other words, the graph will show you what the 3 portfolio would do if the S&P moves at one 4 percent, what the portfolio would do if the S&P 5 moves up two percent, what it would do if the 6 S&P moves up three percent --</p> <p>7 A Yes.</p> <p>8 Q -- right?</p> <p>9 A Yes.</p> <p>10 Q So one graph, one imagine shows you 11 how the portfolio performs if the S&P moves up 12 one percent and two percent and three percent?</p> <p>13 A Yes. Given a choice of time frames in 14 volatility assumptions, yes.</p> <p>15 Q Understood.</p> <p>16 So what did that graph look like when 17 you looked at it in the February 1st to February 18 8th time frame?</p> <p>19 A The graph looks like -- it has the 20 same shape as it always done, according to our 21 strategy, and that is that there's a point at 22 which you begin to lose money as the market 23 rises.</p> <p>24 Q Okay. And what was that graph telling 25 you about what would happen to the portfolio if</p>	<p style="text-align: right;">Page 632</p> <p>1 because what I was looking at was my breakeven 2 on the nearby options expiration which was now 3 the entire portfolio.</p> <p>4 This was somewhat an usual scenario.</p> <p>5 This is not the scenario that you heard me 6 describe on the call where we had a wide variety 7 of positions -- and I think that's how I 8 described it -- in fairly distant expiration 9 months.</p> <p>10 As you pointed out, we had a few in 11 March, and the bulk of the fund's portfolio were 12 in February and end of February so --</p> <p>13 Q But the function of OptionVue is the 14 same, right?</p> <p>15 It's to tell you what's going to 16 happen to the portfolio given certain movements 17 in S&P, right?</p> <p>18 A Yes.</p> <p>19 Q So my question is -- is, given that 20 function, do you recall or did the imagine show 21 you the prospect of the portfolio losing more 22 than eight percent of its value?</p> <p>23 A Again, I don't recall the specific 24 picture to answer that.</p> <p>25 Once again, my focus was on the</p>
<p style="text-align: right;">Page 631</p> <p>1 the S&P went up one percent?</p> <p>2 A I don't recall exactly.</p> <p>3 Q Do you recall what it said would 4 happen to the portfolio if the S&P moved up two 5 percent?</p> <p>6 A No. Again, I don't recall the 7 specifics of what that picture looked like at 8 that point in time.</p> <p>9 Q But you remember the shape of the 10 graph, right?</p> <p>11 A Yes.</p> <p>12 Q Do you recall what percentage S&P 13 increase was at the end of the X axis in the 14 image?</p> <p>15 A No.</p> <p>16 Q What was typical?</p> <p>17 A There's really not a typical number. 18 It -- I mean, I adjust that depending on 19 expirations.</p> <p>20 Q On that graph, when you looked at it a 21 few times from February 1st through February 22 8th, did you ever -- did the graph ever reflect 23 the prospect of the fund losing more than eight 24 percent?</p> <p>25 A Yeah. I can't recall that exactly</p>	<p style="text-align: right;">Page 633</p> <p>1 expiration graph and my breakeven point, and 2 that's -- that's my habit. That's how I manage. 3 When I say habit, that's the process that I 4 consistently use to manage nearby expirations.</p> <p>5 Q I want to turn your attention to CFTC 6 Exhibit 2, which is the Daily HFXAX Prices. And 7 I want to turn your attention specifically to 8 the second page and the -- and the right-most 9 column which reflects the close of the -- the 10 NAV on that date.</p> <p>11 What's the highest value -- I'm sorry. 12 What's the highest NAV close that you see in 13 January?</p> <p>14 A Just by eyeball, I see a 1067.</p> <p>15 Q On January 23rd, right?</p> <p>16 A Yes.</p> <p>17 Q Okay. And that appears to be the high 18 watermark unless you go back -- unless you go 19 back to before the -- I'm sorry -- unless you go 20 back to December 15th, right?</p> <p>21 A Yeah. That's correct.</p> <p>22 By the way, I'm not sure where -- 23 where -- there was a pretty large distribution. 24 I'm not sure if that's factored in here 25 somewhere.</p>

<p style="text-align: right;">Page 634</p> <p>1 Q I think you're right. I think that 2 takes place on December 16th and is reflected in 3 the fairly substantial decrease in the NAV from 4 almost 11 to about 10, right?</p> <p>5 A Okay.</p> <p>6 Q Does that consistent to you?</p> <p>7 A Yes.</p> <p>8 Q But there were no other distributions 9 after December 16th?</p> <p>10 A I don't believe so, no.</p> <p>11 Q So you have the relative high 12 watermark on January 23rd, and then I want to 13 turn your attention to February 8th where the 14 close is 1046. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And that's about two percent down from 17 your -- from that January 23rd high watermark, 18 right?</p> <p>19 A Sure, yes.</p> <p>20 Q And on February 8th you received some 21 version of Exhibit 11B, right?</p> <p>22 A Yes.</p> <p>23 Q And that version of 11B shows you a 24 delta of negative 468, right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 636</p> <p>1 been not only monitoring but actually using 2 delta as a risk metric, it's been my experience 3 that that delta model has been much more 4 accurate.</p> <p>5 Q OptionVue's delta model?</p> <p>6 A Yes.</p> <p>7 Q Okay. And if we were to use 8 OptionVue, we'd be able to reconstruct -- and 9 put in your portfolio as of February 8th, we'd 10 be able to reconstruct what that delta was, 11 right?</p> <p>12 A Yes.</p> <p>13 Q Do you recall whether around February 14 8th OptionVue's prediction about what would 15 happen if the S&P moved up one percent was 16 approximately a negative four and a half percent 17 hit to the fund?</p> <p>18 A No. I don't recall.</p> <p>19 Q You don't recall anything about what 20 OptionVue was telling you about a one percent -- 21 how a one percent move in the S&P would affect 22 the fund?</p> <p>23 A I don't because, as I testified, I 24 knew, my breakeven at the time based on the 25 expiring options because, again, a one percent</p>
<p style="text-align: right;">Page 635</p> <p>1 Q Which is intended to approximate the 2 portfolio's reaction to an S&P movement, right?</p> <p>3 A That's the intent, not yet verified 4 and the reason we're keeping the data, yes.</p> <p>5 Q And specifically the delta number 6 reflects an approximation that the fund is going 7 to lose over four and a half percent if there's 8 a one percent increase in the S&P, right?</p> <p>9 A That's what it's intended to portray, 10 again, subject to us monitoring the actuals to 11 see whether that's realistic.</p> <p>12 Q And if you had looked at your 13 OptionVue on February 8th, would your OptionVue 14 also have showed you that the fund -- that the 15 portfolio would lose approximately four and a 16 half percent, given a one percent increase in 17 the S&P?</p> <p>18 A First, I don't know because I -- as I 19 said, I don't know that I looked at OptionVue 20 that day or that I can remember the snapshot.</p> <p>21 Q But OptionVue uses delta to make -- to 22 produce its graph?</p> <p>23 A OptionVue uses a volatility-modeled 24 delta which I find to be more accurate than a 25 regular delta. And in the year since we have</p>	<p style="text-align: right;">Page 637</p> <p>1 move has to come attached with a time frame. 2 So my time frame was expiration and 3 where's my breakeven.</p> <p>4 Q But -- but you're managing the 5 portfolio to try to limit your drawdown to no 6 greater than eight percent, right?</p> <p>7 A That is correct. And -- and pursuant 8 to that, I was -- I'm very reluctant to abandon 9 the risk framework that allowed me to 10 successfully manage drawdowns in favor of a 11 metric that I had been exposed to for seven or 12 eight days.</p> <p>13 Q But I'm not sure that answers my 14 question.</p> <p>15 You said yes, but then I'm not sure 16 how the rest of it relates to the answer to my 17 question.</p> <p>18 A Well, I think you asked -- or why 19 don't you repeat your question?</p> <p>20 Q You are managing the fund to try to 21 limit a drawdown to eight percent, right?</p> <p>22 A That's correct. And the eight percent 23 is characterized over a monthly period. That's 24 when the metrics are developed on the basis of a 25 monthly accounting period.</p>

<p style="text-align: right;">Page 638</p> <p>1 And the metrics I use -- and they have 2 a foundation in statistical process control. I 3 recall from my testimony prior that the eight 4 percent number is not a stop loss. It's a 5 process output based on managing -- 6 Q That's not relative to my question. 7 I'm just asking whether you tried to 8 manage the fund to limit drawdowns to eight 9 percent. 10 A And I think it's very relevant, and so 11 if -- I'll finish my response. 12 The way I did that was to use the 13 existing risk framework in -- under the 14 principles of statistical process control by 15 which I managed the process parameters, and the 16 output ends up being what I want it to be, and 17 that has been proven over years of history. 18 So as a result, we are trying out a 19 delta situation. 20 I'm sticking to the risk metrics that 21 I know have been successful for me, managing 22 against those, managing the portfolio against an 23 expiration time horizon, as I always have, so 24 being consistent in applying my process both on 25 a risk side and a portfolio management side and</p>	<p style="text-align: right;">Page 640</p> <p>1 Q Okay. And as you said on the call, 2 the unacceptable loss would be something greater 3 than eight percent? 4 A Yes. 5 Q And so were you paying attention to 6 that -- what that primary tool was telling you 7 on February 8th of 2017? 8 A As I mentioned, the way my process 9 works in managing the portfolio is once we get 10 near to expiration, I manage the options against 11 their expiration curve, so to speak, coming into 12 expiration, as I have always done. 13 Q Were you paying attention to what 14 OptionVue, your primary tool, was telling you on 15 February 8th? 16 A Yes. It told me the breakeven point 17 for the options that were coming into 18 expiration, and that's the information I need to 19 then make an assessment and a judgment about 20 when and how to adjust, supplemented by the risk 21 parameters which, if go -- if they go counter to 22 my adjustment or my judgment, they alert me to 23 make -- to take action. 24 Q Was OptionVue capable of telling you 25 what would happen to the fund's portfolio if the</p>
<p style="text-align: right;">Page 639</p> <p>1 expecting that I will get the results I have in 2 the past. 3 Q On the call we listened to earlier, 4 you told the advisors that the goal in 5 everything you do is to keep your drawdown to 6 eight percent, right? 7 A That is correct. 8 Q And in describing how you actually do 9 that, you described OptionVue, correct? 10 A Yes. 11 Q Okay. So -- 12 A Well, let me -- let me -- 13 Q Were you not -- 14 A On that call I described OptionVue as 15 a tool I use to make projections on how market 16 moves, volatility, I mentioned on the call, how 17 new positions, position adjustments, how they 18 all impact the potential future performance of 19 the fund. That's how I use OptionVue. 20 Q You explained your use of OptionVue to 21 advisors as a way to explain to them how you try 22 to limit losses to eight percent, right? 23 A Yes. It's the primary tool I use to 24 be forward looking about what sort of 25 circumstances might create an unacceptable loss.</p>	<p style="text-align: right;">Page 641</p> <p>1 S&P rose one percent on February 9th? 2 A Yes. 3 Q Were you paying attention to what 4 OptionVue was telling you in that regard? 5 A On February 9th, I don't recall if 6 that's a day I looked at it. 7 As I said, repeatedly, coming into 8 expiration, I looked at the expiration graph. 9 That has always been the process. And in this 10 case I knew where the breakeven was for the 11 February positions. 12 Q But OptionVue would be the primary 13 tool that would tell you what would happen to 14 the fund if the S&P went up one percent? 15 A Yes. 16 Q I want to turn your attention to 17 Exhibit 6A and 6B. In particular 6B. 18 A Okay. 19 Q This is the trade confirm for your 20 trades on February 9th, correct? 21 A Yes. 22 Q These calls that are at -- and it only 23 reflects trading calls that are at strikes of 24 2340, 2345, and 2350, right? 25 A Yes.</p>

<p>1 Q And -- and the options with strikes 2 this high were what I've been characterizing as 3 your higher long positions, right? 4 In other words, the long positions 5 that are -- that have strikes even higher than 6 your short positions, correct? 7 A Yes. These are the positions that cap 8 risk. 9 Q Well, do they cap risk of the entire 10 portfolio, or do they cap risk of part of the 11 portfolio? 12 A All options cap risk part of the 13 portfolio. 14 Q Well, let me rephrase the question. 15 These options only cap risk if, in 16 the -- if they cause the aggregate number of 17 call contracts to be equal to or greater than 18 the aggregate number of -- I'm sorry. 19 These options only cap risk if they 20 cause the aggregate number of long contracts to 21 be equal or greater than the aggregate number of 22 short contracts, right? 23 A All of them cap risk to some degree. 24 Q All of them cap risk of particular 25 contracts to some degree. But they don't cap</p>	<p>Page 642</p> <p>1 the research that you did, right, was to 2 evaluate or make an educated determination about 3 what you thought the probability of mean 4 reversion in the market was, right? 5 A Yes. That's correct. That's part of 6 the process. 7 Q And in this period, from February 1st 8 to February 8th, that's something that you were 9 doing research into, right? 10 A Probably. I don't recall 11 specifically, but probably. 12 Q Well, I think -- you just testified 13 that on February 9th you thought that there was 14 a very low probability of the market moving 15 against you, right? 16 A Sure. And I don't know when I was 17 performing that research, but that was certainly 18 my mindset, yes. 19 Q Okay. Right. So you're -- so you're 20 sitting at your computer on February 9th 21 deciding whether to enter into trades or not, 22 and one of the things you're considering is 23 you're -- what your research is telling you 24 about the probability of an upward move, right? 25 A Yes.</p>
<p>1 the risk of the whole portfolio? 2 A They don't cap all the risk of the 3 whole portfolio unless what you said holds. 4 Q Thank you. 5 So on February 9th, you chose not 6 to -- not to buy back any of your short call 7 positions, correct? 8 A That's -- that's correct. According 9 to the normal process I follow, I had no risk 10 triggers, I had no unusual movement in the fund. 11 I had a market point of view over the 12 next week that suggested a -- an adverse move 13 was statistically very unlikely. And given that 14 set of factors, as I have at every point in the 15 past where those have obtained, I made the 16 choice not to cover short calls but instead to 17 adjust and move risk-capping calls. 18 Q And it was your practice to pay 19 attention to -- or to evaluate what you thought 20 was the probability of mean reversion in the 21 market, right? 22 A Yes. 23 (Reporter clarification.) 24 BY MR. WASSERMAN: 25 Q And, in fact, that was a big part of</p>	<p>Page 643</p> <p>1 (Reporter clarification.) 2 THE WITNESS: It's -- again, it's 3 essentially my informed judgment, research, 4 experience with market behavior. Again, that's 5 the essentially judgment portion of what I use 6 to manage the portfolio. 7 BY MR. WASSERMAN: 8 Q Okay. And as you just testified, that 9 determination was -- was the driving force 10 behind your decision not to reduce your short 11 exposure, right? 12 A No. 13 Q On February 9th? 14 A No. I wouldn't characterize that. I 15 didn't make a conscious decision not to reduce 16 exposure. I simply had no data that suggested I 17 should. 18 Q On February 9th you're sitting there 19 with a large short position in February 20 third-week expiries and end-of-month February 21 expiries, right? 22 A A large short call position, yes. 23 Q Yes. 24 And on February 9th, you chose not to 25 take any of that risk off the table, correct?</p>

<p>1 A Again, nothing about my process or the 2 information available to me suggested that that 3 would be appropriate to operating the strategy. 4 Q So you chose not to take the risk off 5 the table, correct? 6 A Again -- 7 Q I understand you're saying that you 8 thought that was the right move. And I'm not 9 disputing that that's -- I'm not trying to argue 10 with you that that's what you thought. 11 I'm -- I'm simply asking -- I am 12 simply trying to confirm that you made the 13 determination on February 9th -- based on your 14 view of what was good strategy, you made the 15 decision not to reduce any of that short 16 exposure? 17 A Again, it might be a distinction 18 without a difference, but I think it's 19 important. 20 Similar to the first days of February 21 where no trading was done, according to the fund 22 strategy and according to my process, nothing 23 came to my attention that suggested I take 24 action. 25 In other words, nothing about the</p>	<p>Page 646</p> <p>1 Q And that reflects a drop from your 2 December -- I'm sorry -- a drop from your 3 January 23rd high of about five percent, 4 correct? A little more than five percent? 5 A Yes. 6 Q So going into trading on February 7 10th, you -- you already have a -- over five 8 percent decline from your January high 9 watermark? 10 A Yes. 11 Q And then turning your attention to 12 exhibit -- CFTC Exhibit 7, is this the trade 13 confirm from February 10th? 14 A Exhibit 7, did you say? 15 Q Yes. 16 A Yes. 17 Q And actually before we get to Exhibit 18 7, Exhibit 11B shows that -- I'm sorry. 19 Exhibits 11A and 11B reflect that you 20 were sent an exposure summary the morning of 21 Friday, February 10th, correct? 22 A Yes. 23 Q And that exposure summary reflected a 24 delta of negative 625, correct? 25 A On February 9th, yes.</p>
<p>1 market conditions suggested I put on new 2 positions. Nothing about my risk metrics 3 suggested that -- that I make any adjustment 4 actions. 5 So essentially I'm not thinking should 6 I or shouldn't I. 7 I'm looking at my data set, my 8 dashboard, relying on my judgment, relying on 9 consistency of process, and nothing is popping 10 up to tell me to move at this particular day. 11 And that occurred for all of those 12 days. 13 MR. SCHMIDT: What days are you 14 referring to when you gestured? 15 THE WITNESS: I'm sorry. I'm 16 referring to the CFTC Exhibit 11B. I'm sorry. 17 That's the wrong exhibit. 18 CFTC Exhibit 10, the February trade 19 log which displays no trading activity before 20 the 9th of February in the month of February. 21 BY MR. WASSERMAN: 22 Q As reflected on -- on CFTC Exhibit 2, 23 the closing NAV of the fund on February 9th is 24 10.1, right? 25 A Yes.</p>	<p>Page 647</p> <p>1 Q The 625 is filled in for February 2 10th, correct? 3 A Yes. 4 Q And you received this on the morning 5 of February 10th, correct? 6 A I did, and I'd like to enter into the 7 record again that this is purely -- this is not 8 something from either a risk or operating 9 standpoint that anyone connected with the fund 10 is managing to. 11 It's simply data that's being 12 collected for a potential inclusion of some of 13 these measures in a future risk matrix. 14 Q Do you recall whether you looked at -- 15 at OptionVue on February 10th? 16 A I don't recall. 17 Q Would it have been your practice to 18 look at OptionVue when the fund had -- was down 19 over five -- over five percent from its recent 20 high watermark? 21 A I had looked in prior days, and as I 22 previously testified, nothing about what 23 OptionVue is telling me is going to change and 24 nothing is going to be unfamiliar to me. 25 So at this point that tool wasn't</p>

<p style="text-align: right;">Page 650</p> <p>1 necessary for me to make my judgment calls and 2 reacting to market conditions. 3 Q Turning your attention to CFTC Exhibit 4 7, can you review the trade confirm reflected by 5 that document? 6 A Yes. 7 Q Looking at the first three 8 transactions reflected, is it accurate to 9 categorize that as rolling some high long calls 10 from February to March? 11 A Yes. 12 Q Looking at the next three lines, is it 13 accurate to describe those three transactions as 14 doing the same thing, rolling a high long 15 position from February to March? 16 A I'm sorry. Yes. The next three, so a 17 total of the first six lines? 18 Q Yes. 19 A Yes. That's correct. 20 Q Then on the 7th line, it shows that 21 you bought 1250 contracts of February 2265 22 calls, right? 23 A Yes. 24 Q And that is actually something that 25 reflects a ticking down of your short exposure</p>	<p style="text-align: right;">Page 652</p> <p>1 nearer month is going to increase in value 2 faster than a long call position in a further 3 out month, right? 4 A No. 5 Q Explain to me why I'm wrong. 6 A Because the calls that I rolled were 7 expiring in a week. So they would have 8 basically no value whatsoever. They would -- 9 Q If they're -- 10 A -- likely not move at all. 11 Q If they're out of the money? 12 A And they are -- as you mentioned, 13 they're the long calls -- 14 Q Okay. 15 A -- out of the money. 16 Q I understand. Thank you. 17 A So in summary, all the transactions on 18 this page were designed to reduce and did, in 19 fact, significantly reduce risk in the 20 portfolio. 21 Q Turning your attention to Exhibit 3, 22 what's the S -- what's the close of the S&P on 23 February 9th? 24 A I've lost it. I'm sorry. February 25 9th?</p>
<p style="text-align: right;">Page 651</p> <p>1 to some extent, correct? 2 A Yes. 3 Q Then you have some transactions in 4 April, another ticking down of a thousand 5 contracts of the short exposure. And actually, 6 this appears to reflect rolling those contracts 7 out into April, correct? 8 A Yes. 9 Q And the same thing for the next six -- 10 six transactions, correct? 11 A Yes. I think if I have not lost track 12 of your transaction count. 13 Q And turning your attention to the last 14 five transactions, that represents, again, 15 rolling some high long positions from February 16 to March? 17 A Yes. And by the way, all of those 18 high long position rolls decreased risk in the 19 portfolio. 20 Q Well, you're rolling a long position 21 from a -- a nearer month to a further month, 22 correct? 23 A Correct. 24 Q And all other things being equal, as 25 the market goes up, a long call position in a</p>	<p style="text-align: right;">Page 653</p> <p>1 Q Yes. 20 -- 2307.87, right? 2 A Yes. 3 Q Which is pretty close to the strike of 4 the April calls that you're going short on this 5 date, correct? 6 A Yes. 7 Q So you're not -- in rolling your 8 February short positions out to April, are you 9 really significantly reducing risk in this 10 scenario where the strikes of the April calls 11 are almost in the money? 12 A Yes. 13 Q Why is that? 14 A Well, if you'll notice the value of 15 April calls is near \$40, which means that at 16 April expiration, there's no impact on the 17 portfolio if the S&P is nearly two percent 18 higher, which in the volatility environment 19 during this period of time would be a very 20 significant movement. 21 Q I'm sorry. Can you repeat that? 22 A Sure. The value of those calls would 23 allow for, at expiration, a breakeven; in other 24 words, no downside exposure to the fund at a S&P 25 April expiration strike of 2348.</p>

<p style="text-align: right;">Page 654</p> <p>1 Q Where are you coming up with that 2348 2 number? 3 A The value of the call is worth \$38. 4 Q I see -- 5 A At 2348, it will be worth 38 -- at 6 expiration, it will be worth \$38. 7 Q Breakeven on that -- I'm sorry? 8 A The point -- 9 Q The breakeven on the -- that 10 particular contract would be for the S&P to be 11 at 2348 -- 12 A Correct. 13 Q -- right? 14 A Which means that there -- there's no 15 additional exposure as opposed to the call I 16 bought back at 2265 in February, which, at this 17 point in time, is nearly acting like a futures 18 contract, which means S&P moves are nearly one 19 to one in terms of point for point in the value 20 of that call. We've now taken a situation where 21 the market can go up \$38 and have no impact on 22 the fund's portfolio from this point forward.</p> <p>23 MR. WASSERMAN: Can I take a moment? 24 BY MR. SCHMIDT: 25 Q Mr. Walczak --</p>	<p style="text-align: right;">Page 656</p> <p>1 A Right. 2 Q -- and I just wanted to know what that 3 meant. 4 A Sure. Related to these contracts, 5 that's correct. 6 Q Thank you. That's all I was asking? 7 A Okay. 8 BY MR. WASSERMAN: 9 Q Do you recall looking at OptionVue on 10 February 10th? 11 A I don't recall it. 12 Q Would OptionVue have told you what 13 would happen to the fund's NAV if the market 14 moved up one percent on February 11? 15 A I'm -- I'm sorry for my confusion. I 16 think I've answered those questions. 17 Q I'm sorry for repeating it, but to 18 confirm, if you were -- and to be fair, I 19 haven't asked about it on this particular date. 20 But if you were looking at OptionVue 21 on February 10th, OptionVue would tell you or 22 approximate for you what would happen to the 23 value of the portfolio if the -- if the S&P were 24 to go up one percent on February 11th, right? 25 A Yes.</p>
<p style="text-align: right;">Page 655</p> <p>1 A Yes. 2 Q -- the last statement you made, are 3 you saying that there is -- this ensures there's 4 no impact on the entire portfolio or just on 5 those contracts. 6 A On those contracts, and my point was 7 to demonstrate that this does materially remove 8 risk in that I took a call that has nearly 9 one-for-one exposure -- 10 Q Yeah? 11 A -- and it -- it's a complicated 12 question. I'm sorry. I have to provide a 13 completed answer in the interest of -- 14 Q That's fine. I -- you just said 15 there's no effect on the portfolio, and I just 16 wanted to know whether you were talking about 17 those contracts or everything in the portfolio. 18 I just wanted it to be clear. I'm not 19 questioning -- 20 A Sure. 21 Q -- your reasoning or what you're 22 saying behind it. 23 A Okay. I gotcha. 24 Q You just said no effect on the 25 portfolio --</p>	<p style="text-align: right;">Page 657</p> <p>1 Q Do you recall -- but you don't recall 2 looking at OptionVue on February 10th to learn 3 that. 4 A No. I recall, again, and I have to 5 repeat just to make sure that my response is 6 clear, that in the circumstance of nearby 7 expirations, the graph in OptionVue is not going 8 to change from day to day. So I didn't have a 9 need to go in there to look at it. I had the 10 information. It's a tool. I had the information 11 I needed, in combination with the other research 12 I perform and the process I follow and the 13 judgment I use, to make the appropriate 14 decisions. 15 Q On February 10th -- at the open, on 16 February 10th, your -- your -- the fund is 17 sitting over five percent below its January 18 high-water mark, right? 19 A Yes. 20 Q And you represented to advisors and 21 investors that you tried to limit drawdowns to 22 eight percent? 23 A Yes. 24 Q What did you do on February 10th to 25 prevent the fund from losing more than eight</p>

<p>1 percent?</p> <p>2 A I followed the same process I always 3 do, which is to monitor my risk metrics using 4 essentially statistical process control so that, 5 when those risk metrics are in control, if they 6 get out of control, I react to them; if they're 7 in control, I make judgments based on the 8 process I talked about, coming into expiration.</p> <p>9 And I am confident -- with many years 10 of experience in process control, I am confident 11 in the methodology that suggests if you control 12 parameters and desired output of the -- of the 13 process is the result that would follow. That 14 was my experience 12 years managing the fund. 15 It was my experience 22 years in process 16 management.</p> <p>17 Q I'm sorry. Mr. Walczak, could you be 18 a little more specific for me?</p> <p>19 What exactly were you doing on 20 February 10th to ensure that the drawdown didn't 21 go from five percent to over eight percent?</p> <p>22 A I was doing what I always do. I was 23 managing --</p> <p>24 Q Well, can you give me some specifics?</p> <p>25 A Sure. I monitor my risk metrics.</p>	<p>Page 658</p> <p>1 happening.</p> <p>2 A So, again, what I represent to 3 advisors is that we have a process in place 4 that, when followed consistently over time, has 5 unable me to limit losses to roughly eight 6 percent -- sometimes a little bit more, but 7 roughly eight percent. That's certainly our 8 goal.</p> <p>9 And I think in that representation to 10 sophisticated investors, I have always colored 11 that representation with, there are no 12 guarantees, there may be a market situation that 13 we haven't anticipated, but we follow a 14 consistent process, we follow a set of risk 15 metrics, and -- and the result has been 16 successful. And no guarantees going forward, 17 but the result has been successful in limiting 18 drawdowns.</p> <p>19 That is how I do it. And every day, I 20 follow some portion of that process, including 21 on February 10th.</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q When you sit at your computer and look 24 at OptionVue, do you need to log into it?</p> <p>25 A No. Well, I need to log into my</p>
<p>1 Q Which risk metrics?</p> <p>2 A All of the risk metrics.</p> <p>3 Q The risk metrics from the Manamu 4 Solutions table?</p> <p>5 A Yes.</p> <p>6 Q What else?</p> <p>7 A Using my judgment and using my 8 understanding of the expiration breakeven point 9 in nearby expiring options.</p> <p>10 Q But -- but the -- the breakeven for 11 particular options doesn't tell you whether the 12 portfolio is going to decline -- doesn't 13 quantify the portfolio decline, right?</p> <p>14 A I -- I guess if -- that's another way 15 of managing the fund if you want to look at -- 16 if you want to take actions according to what 17 you described. I'm simply describing --</p> <p>18 Q I'm focusing on the -- on -- on the -- 19 the attention to percentage decline.</p> <p>20 You've represented to advisors and 21 investors that you take steps to prevent the 22 decline of over eight percent.</p> <p>23 A Right.</p> <p>24 Q And I'm asking what specifically you 25 did on February 10th to prevent that from</p>	<p>Page 659</p> <p>1 computer, but I have not password-protected 2 OptionVue.</p> <p>3 Q Do you need to launch it, or is it 4 always launched?</p> <p>5 A I need to launch it.</p> <p>6 Q And that's simply by clicking on an 7 icon?</p> <p>8 A Yes.</p> <p>9 BY MR. WASSERMAN:</p> <p>10 Q Can you describe with more specificity 11 what you did on February 10th to prevent a 12 drawdown of more than -- to try to prevent a 13 drawdown of more than eight percent?</p> <p>14 A On -- on any given day, I'm not 15 focused on a particular action other than what's 16 a part of my normal process. So on February 17 10th, I was doing what I do every day. I'm 18 evaluating my risk metrics. I'm using my judgment 19 about nearby options expiration and what actions 20 to take. And, I mean, the short answer --</p> <p>21 Q And what are you looking at to -- 22 to -- to decide what actions to take?</p> <p>23 A Again, I -- I looked at the OptionVue 24 breakeven graph so I understood where those 25 options --</p>

<p style="text-align: right;">Page 662</p> <p>1 Q You looked at the OptionVue breakeven 2 graph for particular options?</p> <p>3 A For the nearby expiration series.</p> <p>4 Q Okay. But your -- your February third 5 week call options were already out of the money, 6 right?</p> <p>7 A Some call options were in the money. 8 Some were out of the money.</p> <p>9 Q So some of them were past breakeven, 10 right?</p> <p>11 A Well, again, I looked at the entire 12 expiration series, in other words, the sum total 13 of options expiring the third week of February.</p> <p>14 QOkay. And so did that -- did 15 looking -- but the breakeven for a particular 16 series of options does not tell you what's going 17 to happen to the overall portfolio, right?</p> <p>18 A No.</p> <p>19 QOkay. So my question is: What steps 20 were you taking to make sure the overall 21 portfolio didn't decrease several more 22 percentage points?</p> <p>23 ASO in -- in -- I mean, the short 24 answer is just to refer to CFTC Exhibit 7.</p> <p>25 QOkay.</p>	<p style="text-align: right;">Page 664</p> <p>1 Q You don't recall looking at a picture 2 that represented the performance of the whole 3 portfolio on February 10th?</p> <p>4 A On that particular day, I don't recall 5 if I did or didn't.</p> <p>6 Q Was there any other tool available to 7 you besides OptionVue that would have -- that 8 could have evaluated the portfolio performance 9 relative to the performance of the underlying 10 S&P?</p> <p>11 A None that I was comfortable using, 12 which goes to my concern with consistency over 13 time. In other words, I am reluctant to abandon 14 successful operating procedures and -- and 15 successful metrics in favor of things I was 16 unfamiliar with.</p> <p>17 So the short answer is OptionVue is 18 what I would use. In this case, I understood 19 what it was telling me. Didn't need to look at 20 it every day.</p> <p>21 Q I'm going to give you a document 22 marked CFTC Exhibit 12?</p> <p>23 (CFTC Exhibit No. 12 was 24 marked for identification.)</p> <p>25 BY MR. WASSERMAN:</p>
<p style="text-align: right;">Page 663</p> <p>1 A The trades I did on -- on February 2 10th were, in my judgment, the appropriate 3 actions to take, looking at all the indicators 4 that I look at, nearby expiration, risk metrics, 5 my current informed market view, or my judgment 6 informed by my market view. These are the 7 actions that I felt were appropriate. And, 8 again, consistency is the most important thing, 9 consistent with judgments I made in the past in 10 similar situations.</p> <p>11 Q Okay. On February 10th, do you recall 12 looking at an OptionVue graph that represented 13 the performance of the whole portfolio?</p> <p>14 A I don't recall if I did or did not 15 that day.</p> <p>16 Q If you had looked at an OptionVue 17 graph representing the performance of the 18 overall portfolio on February 10th and that 19 graph showed you that a one-percent move up in 20 the S&P would lead to greater than a 21 three-percent decline in the portfolio, what 22 would you have done?</p> <p>23 A I can't speculate on what -- what I 24 would have done. I just know that I don't 25 recall looking at it.</p>	<p style="text-align: right;">Page 665</p> <p>1 Q Mr. Walczak, do you recognize the 2 document marked CFTC Exhibit 12?</p> <p>3 A Yes.</p> <p>4 Q It's an exposure summary from Mike 5 Schoonover, correct?</p> <p>6 A Yes.</p> <p>7 Q And more specifically, it appears to 8 be from February 13th, 2017, correct?</p> <p>9 A Yes.</p> <p>10 Q And you'll -- you'll see that it 11 reflects that, on February 10th, the actual 12 decline -- or sorry -- the predicted decline to 13 the fund based on the delta of -- of negative 14 625 was negative 2.23, right?</p> <p>15 A Yes.</p> <p>16 Q And that the actual decline in the 17 fund on February 10th was negative 2.48, right?</p> <p>18 A Yes.</p> <p>19 Q So sitting here today -- well, one 20 more question before I ask that.</p> <p>21 And on February 10th, the delta 22 reflected on -- on this exhibit is negative 23 6.61, correct?</p> <p>24 A Yes.</p> <p>25 Q Higher than it had been the previous</p>

<p>1 day?</p> <p>2 A Yes.</p> <p>3 Q In other words, according to Mr.</p> <p>4 Schoonover's metrics, the fund was more</p> <p>5 sensitive to the underlying S&P on February 13th</p> <p>6 than it was on February 10th, right?</p> <p>7 A Again, just from postexperience, I</p> <p>8 would -- I would tell you that's -- that's not</p> <p>9 accurate because the sensitivity of the -- the</p> <p>10 fund is dependent not just on delta, but also on</p> <p>11 gamma.</p> <p>12 And as you can see in the gamma</p> <p>13 column, gamma was dramatically reduced by the</p> <p>14 trading activity that I undertook.</p> <p>15 Q As you've testified, delta is meant to</p> <p>16 approximate the movement of the portfolio</p> <p>17 relative to the movement of the underlying</p> <p>18 asset, right?</p> <p>19 A That's correct, at a single point in</p> <p>20 time --</p> <p>21 Q Right.</p> <p>22 A -- and immediately thereafter,</p> <p>23 changes, which is reflective of the gamma</p> <p>24 values. The gamma is very important.</p> <p>25 Q And the delta metric is higher on</p>	<p>Page 666</p> <p>1 document, is higher on February 13th than on</p> <p>2 February 10th, right?</p> <p>3 A Yes, it is.</p> <p>4 Q Okay. So as reflected by the delta</p> <p>5 metric, the portfolio is more sensitive to an</p> <p>6 underlying movement on -- of the S&P on February</p> <p>7 13th than it was on February 10th based on the</p> <p>8 delta metrics approximation alone?</p> <p>9 A Yes.</p> <p>10 Q Okay. So sitting here today, do you</p> <p>11 think that the trades you made on February 10th</p> <p>12 significantly reduced the portfolio's exposure</p> <p>13 to the S&P?</p> <p>14 A They -- they did significantly reduce</p> <p>15 the exposure. However, the market movement on</p> <p>16 that day because of the gamma number, moved that</p> <p>17 exposure higher again.</p> <p>18 Q Can you explain that?</p> <p>19 A Well, gamma reflects the change in</p> <p>20 delta.</p> <p>21 Q Okay.</p> <p>22 A So if the market moves higher and you</p> <p>23 have a negative gamma number, your delta would</p> <p>24 get higher absent any change in the positions at</p> <p>25 all.</p>
<p>1 February -- I'm sorry.</p> <p>2 The -- the delta metric on February</p> <p>3 13th reflects that the portfolio is expected to</p> <p>4 decline 6.6 percent in response to a one-percent</p> <p>5 S&P move, whereas the delta on February 10th</p> <p>6 reflected that the portfolio would decline by</p> <p>7 6.2 percent based on a one-percent S&P move,</p> <p>8 right?</p> <p>9 A Actually not because -- for the</p> <p>10 explanation I just offered relative to gamma. A</p> <p>11 one-percent move would most certainly,</p> <p>12 dramatically change that delta calculation.</p> <p>13 Q But a one-percent move in the S&P?</p> <p>14 A Yes.</p> <p>15 Q Would dramatically change --</p> <p>16 A The delta calculation and the</p> <p>17 performance of the fund relative to what that</p> <p>18 delta would predict.</p> <p>19 Q I'm sorry. I don't follow. I'm</p> <p>20 asking just a very specific question.</p> <p>21 Delta, which is intended to</p> <p>22 approximate the movement of the portfolio in</p> <p>23 response to underlying market movement --</p> <p>24 A Yes.</p> <p>25 Q -- that delta, as expressed on this</p>	<p>Page 667</p> <p>1 Q Okay.</p> <p>2 A And so in this case, the actions I</p> <p>3 took reduced the delta; market movement</p> <p>4 increased it again.</p> <p>5 Q Well, it appears that you -- the --</p> <p>6 the -- the moves you made reduced the gamma,</p> <p>7 right?</p> <p>8 A They reduced both.</p> <p>9 If you put February 10th's trades into</p> <p>10 any sort of Black Scholes model you like, you'll</p> <p>11 find that they are positive delta.</p> <p>12 Significantly positive delta.</p> <p>13 Q What does that mean, positive delta?</p> <p>14 What does that mean for a trade to be</p> <p>15 positive delta?</p> <p>16 A What does it mean for a portfolio to</p> <p>17 be positive delta?</p> <p>18 Q We've discussed what it means for a</p> <p>19 portfolio -- what delta means for a portfolio.</p> <p>20 A All right.</p> <p>21 Q I'm asking you what does it mean</p> <p>22 for --</p> <p>23 A For this portfolio --</p> <p>24 Q -- a trade --</p> <p>25 A For this portfolio, this is a very</p>

<p>1 positive delta portfolio.</p> <p>2 Q When you say this -- you're holding up</p> <p>3 the Exhibit --</p> <p>4 A Exhibit 7.</p> <p>5 Q -- 7?</p> <p>6 A Correct.</p> <p>7 Q But Exhibit 7 is not a portfolio.</p> <p>8 Exhibit 7 is a series of trades, right?</p> <p>9 A As a portfolio is, in fact, a series</p> <p>10 of trades; is it not?</p> <p>11 Q Okay. I think we're -- we're mixing</p> <p>12 up our semantics here. When I say portfolio,</p> <p>13 I'm referring to the futures fund portfolio --</p> <p>14 A Correct.</p> <p>15 Q -- in its entirety --</p> <p>16 A Correct.</p> <p>17 Q Okay? What's reflected on Exhibit 7</p> <p>18 is a series of transactions of about two dozen</p> <p>19 transactions --</p> <p>20 A Yes.</p> <p>21 Q -- right? Okay.</p> <p>22 Can we, for the purposes of the</p> <p>23 record, refer to them as a series of</p> <p>24 transactions?</p> <p>25 A So here's my explanation. I'm</p>	<p>Page 672</p> <p>1 position on February 10th, right?</p> <p>2 A Yes.</p> <p>3 Q And more specifically, you bought back</p> <p>4 some of the calls with a strike of 2265 that you</p> <p>5 were short, correct?</p> <p>6 A Yes.</p> <p>7 Q And this appears to reflect that you</p> <p>8 bought back a total of 4,000 short contracts,</p> <p>9 correct?</p> <p>10 A Right.</p> <p>11 Q Was the total of 4,000 short contracts</p> <p>12 that you bought back a significant percentage of</p> <p>13 the overall short call position that you had in</p> <p>14 the February -- third-week February expiry?</p> <p>15 A I don't know.</p> <p>16 Q Can we go back to Exhibit 4B?</p> <p>17 Exhibit 4B shows, as of February 10th,</p> <p>18 your aggregate -- I'm sorry -- all your short</p> <p>19 call positions for the third-week February</p> <p>20 expiry, correct?</p> <p>21 A Yes.</p> <p>22 Q Can you approximate the aggregate</p> <p>23 number of contracts that you were short with</p> <p>24 strikes between 2260 and 2285?</p> <p>25 A Not wanting to do the math in my head,</p>
<p>1 actually trying to simplify this.</p> <p>2 If we start with a -- an account in</p> <p>3 all cash and I did these transactions, would</p> <p>4 this not be the portfolio?</p> <p>5 Q Okay. So let me --</p> <p>6 A And the reason --</p> <p>7 Q -- let me -- let me -- I'm going to</p> <p>8 help you.</p> <p>9 A -- the reason I'm saying that is --</p> <p>10 Q I'm going to help you?</p> <p>11 A -- this portfolio would have a</p> <p>12 positive delta. And if you add this positive</p> <p>13 delta -- a significantly positive delta and</p> <p>14 gamma, and if you add that to the existing</p> <p>15 portfolio reflected by the spreadsheet, that's</p> <p>16 what I'm talking about. It would have made a</p> <p>17 significant decrease in the negative delta of</p> <p>18 the existing portfolio before adding this other</p> <p>19 portfolio to it.</p> <p>20 So these trades reflect a significant</p> <p>21 reduction in the negative delta. The gamma,</p> <p>22 however, and the market movement caused that</p> <p>23 delta to move again in the wrong direction.</p> <p>24 Q As reflected in Exhibit 7, you bought</p> <p>25 back a certain number of contracts of your short</p>	<p>Page 671</p> <p>1 I'll have to say no.</p> <p>2 Q Okay. Does it -- to save us a little</p> <p>3 bit of time, it appears to be in the tens of</p> <p>4 thousands, right?</p> <p>5 A Okay. Sure. Yes.</p> <p>6 Q That you're short approximately 40,000</p> <p>7 contracts with strikes from 2260 to 2285.</p> <p>8 A Right. And -- and as you can see in</p> <p>9 the column above, I'm -- I'm also long a</p> <p>10 significant number of contracts with strikes</p> <p>11 well below those strikes.</p> <p>12 Q Okay. But the -- the -- as we have</p> <p>13 discussed before, the portion of the position</p> <p>14 that causes the fund to lose money are the short</p> <p>15 positions, right?</p> <p>16 A In -- in excess of the longs below</p> <p>17 them, yes.</p> <p>18 Q No, but the actual contracts that</p> <p>19 caused the funds to lose money, all other things</p> <p>20 being equal, are the short contracts, right?</p> <p>21 A But all other things are not equal</p> <p>22 because there are long calls with a higher delta</p> <p>23 than the short calls.</p> <p>24 Q I -- understand and I agree. But --</p> <p>25 but the contracts that caused the fund to</p>

<p style="text-align: right;">Page 674</p> <p>1 decline when the market increases are the short 2 contracts, right? 3 A Yes. Yes. 4 Q Okay. So the risk is in the -- the 5 short contracts, right? 6 A Yes. 7 Q And on February 10th, you've only 8 taken about ten percent of those short contracts 9 off the table? 10 A It's incorrect to look at a percentage 11 of short contracts. 12 Q I'm just asking if it's accurate, that 13 you've only taken about ten percent of that 14 short contract exposure for the third-week 15 expiry off the table? 16 A The implication that that reduces risk 17 by some number related to ten percent, for 18 example, is definitely inaccurate. 19 Q That's not what I'm trying to imply. 20 I'm simply trying to confirm that, in the 21 trading you did on February 10th, you only took 22 approximately ten percent of your short position 23 for the third-week February expiry off the 24 table, right? 25 A Without adding up the numbers, I'll</p>	<p style="text-align: right;">Page 676</p> <p>1 percent? 2 A Because on February 10th, I used the 3 same process, the same risk metrics, the same 4 indicators, the same judgments that I had used 5 in the past 12 years in order to control 6 drawdowns to roughly eight percent. 7 So I was confident, by continuing my 8 process, it was most likely I would have the 9 same outcome. 10 MR. WASSERMAN: Jake, do you want to 11 go off the record for one minute? 12 MR. SCHMIDT: We are off the record at 13 4:54 p.m. 14 (A brief recess was taken.) 15 MR. SCHMIDT: We're on at 5:06. 16 Mr. Walczak, no substantive 17 discussions of -- with staff of the SEC or CFTC 18 during the break, correct? 19 THE WITNESS: Correct. 20 MR. SCHMIDT: Thank you. Go. 21 BY MR. WASSERMAN: 22 Q Mr. Walczak, is it accurate to say 23 that the way you execute your strategy does not 24 change regardless of whether you're down two 25 percent from a high watermark or five percent</p>
<p style="text-align: right;">Page 675</p> <p>1 trust your math. 2 Q And, in fact, you didn't even really 3 take all the risk off the table. You simply 4 rolled it to April, right? 5 A Yes. 6 Q Okay. 7 A Again, these are material risk 8 reduction activities, and as I'm trying to 9 describe, it is not as simple as every short 10 call represents a -- the same type of risk or 11 the same measure of risk to the portfolio. 12 Different strikes, different levels of 13 expiration are different levels of risk. 14 So, again, I believe it's inaccurate 15 to suggest anything about ten percent of the 16 short calls. 17 It depends on where they are. It 18 depends where they got rolled to. It depends on 19 whether they got repurchased. 20 The point is that it's risk reduction, 21 and that was my assessment of what needed to be 22 done. 23 Q What gave you confidence that the -- 24 the moves you made on February 10th would help 25 prevent a -- a drawdown of more than eight</p>	<p style="text-align: right;">Page 677</p> <p>1 from a high watermark or ten percent from high 2 watermark? 3 A In -- in terms of the way I execute 4 the strategy, no, I continue to use my risk 5 metrics as a guide. The research, I use my 6 judgment so it's -- it's designed not -- to be 7 consistent and not to change. 8 Q And more specifically, the way you 9 manage risk and the -- strike that. 10 More specifically, the way -- the 11 steps you take to manage risk do not change 12 whether you're down two percent from a high 13 watermark, down five percent from a high 14 watermark, or down ten percent from a high 15 watermark? 16 A That -- that certainly -- performance 17 certainly informs my judgment in terms of how 18 aggressive the steps I'm going to take are, and 19 I think that's evident in the February period of 20 time. Day by day, the level of aggressiveness 21 in risk reduction increased dramatically. 22 Q And when does the level of 23 aggressiveness increase? 24 A Well, it certainly increases when we 25 hit a risk trigger, and it then increases based</p>

<p style="text-align: right;">Page 678</p> <p>1 on market action and my judgment about the 2 portfolio's position.</p> <p>3 Q Okay. When do you start to take -- 4 at -- at what level of drawdown do you start to 5 get more aggressive in managing risk?</p> <p>6 A There isn't a specific level other 7 than those annotated in the risk matrix -- 8 matrix. Other than that, it's simply my judgment 9 about -- but again, we're -- we're trying to 10 manage a process that naturally oscillates and 11 oscillates -- oscillations are reflected by 12 drawdowns. It naturally oscillates within, 13 hopefully, a control band of eight percent so 14 that I use judgment about where we are in that 15 band, being careful not to violate the process 16 control tenants that I use.</p> <p>17 Q And just to clarify one piece of your 18 answer, you referred to the risk metrics. Are 19 you specifically referring to the risk metric -- 20 the -- the --</p> <p>21 MR. WASSERMAN: Jake, what exhibit is 22 that?</p> <p>23 MR. SCHMIDT: This one?</p> <p>24 MR. WASSERMAN: No. The one sitting 25 on top of your pile.</p>	<p style="text-align: right;">Page 680</p> <p>1 10th time frame. At any point in that time 2 frame, did you believe that a one-percent 3 increase in the S&P was likely to result in the 4 fund crossing that eight-percent drawdown 5 threshold?</p> <p>6 A Again, I don't manage specifically to 7 an eight-percent drawdown threshold. So I am 8 not considering whether we're going to cross 9 that threshold or not because, again, it's not 10 something I'm managing to specifically.</p> <p>11 What I'm managing to is the process 12 control parameters that over a very long period 13 of time have demonstrated their ability to 14 control drawdowns to roughly eight percent.</p> <p>15 MR. WASSERMAN: Okay. Thank you. And 16 thank you again for your testimony.</p> <p>17 THE WITNESS: Sure. Thank you.</p> <p>18 BY MR. SCHMIDT:</p> <p>19 Q Okay. I'm handing you what's been 20 marked as SEC Exhibit 66. So this is February 21 15, 2017, correct?</p> <p>22 (SEC Exhibit No. 66 was 23 marked for identification.)</p> <p>24 BY MR. SCHMIDT:</p> <p>25 Q Mr. Walczak?</p>
<p style="text-align: right;">Page 679</p> <p>1 MR. SCHMIDT: 41.</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. WASSERMAN:</p> <p>4 Q Specifically, to the change in NAV per 5 share month risk metric?</p> <p>6 A That's the only one that reflects a 7 risk metric around drawdowns.</p> <p>8 Q Okay. And so according -- so is it 9 your testimony that you start to get more 10 aggressive in managing risk when that risk 11 metric is triggered?</p> <p>12 A When any of the risk metrics are 13 triggered, we naturally -- I naturally get very 14 aggressive in -- in managing the risk.</p> <p>15 Q Is there any other risk metric that 16 you look at besides the ones in Exhibit -- in 17 CFTC Exhibit 41 that cause you to become more 18 aggressive in managing risk?</p> <p>19 A There are times when I look at the 20 OptionVue portfolio and decide that even though 21 no risk metric is triggered that I should make 22 a -- an adjustment of some sort.</p> <p>23 Q Finally, Mr. Walczak, taking you back 24 to -- to the period in early February of 2017 25 and, specifically, the February 1st to February</p>	<p style="text-align: right;">Page 681</p> <p>1 A Yes.</p> <p>2 Q Sorry. It's just got to be audible 3 for her to take it down.</p> <p>4 A Yes. Sorry.</p> <p>5 Q And this is after some significant 6 declines in the fund, correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. And so I'm particularly 9 interested in your e-mail which you say, "We are 10 propping the market up. In addition to J.J.'s 11 color from the floor, I am receiving texts 12 saying, 'You are all over Twitter today as the 13 reason this market keeps moving higher.' We'll 14 need to revisit our risk mitigation strategy on 15 our call this afternoon. I asked J.J. to join 16 the call to provide some color on execution."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. What do you mean -- what did 20 you mean when you said, "We are propping the 21 market up"?</p> <p>22 A Best I can recall, I -- I felt as 23 though the publicity that had surrounded this 24 particular week -- there were some articles 25 that -- I think it was a Wall Street Journal</p>

<p>1 article -- there was some publicity that 2 suggested a large fund was buying back calls. 3 And by doing that, there's a -- there's a 4 potential for -- although, actually, I think 5 J.J. told us that afternoon that -- that it was 6 a temporary phenomenon around a particular 7 execution, but I -- we were concerned about the 8 attention we were getting and whether or not 9 that was influencing market behavior.</p> <p>10 Q Specifically, you were worried about 11 whether it was having a negative impact on 12 execution quality, correct?</p> <p>13 A Yes, that's correct.</p> <p>14 Q Okay. And that's the reference to 15 asking J.J. to provide some more color on 16 execution?</p> <p>17 A Yes.</p> <p>18 Q Okay. And the reason being, I think, 19 is what you alluded to much, much earlier, which 20 is that, if people know that a large player has 21 to get out of certain positions, they could use 22 that information to demand higher prices, 23 knowing that you have to get out, if you have to 24 get out and you have to pay whatever they're 25 going to demand you pay?</p>	<p>Page 682</p> <p>1 Q Do you recognize this document? 2 A This was a -- I was asked to provide a 3 commentary on the fund's performance during this 4 period of time, and this was my first draft. 5 Q Okay. So the answer to the question 6 is you do recognize it? 7 A Yes. I'm sorry. Yes. 8 Q It's okay. It's just a lawyer thing. 9 I need to know that you know what you're talking 10 about? 11 A Yes, yes. 12 Q Okay. So you were asked to provide 13 this written commentary. You did. You sent it 14 to Catalyst New York, correct? 15 A Yes. 16 Q Including Mr. Schoonover and Mr. 17 Szilagyi? 18 A Yes. 19 Q Okay. So at some point, this document 20 was edited by people in New York and then sent 21 out? 22 A That's correct. 23 Q Okay. And SEC 70 is what was actually 24 sent out, correct? 25 (SEC Exhibit No. 70 was</p>
<p>1 A Yes. 2 Q Right? That's the concern? 3 A Yes. 4 Q Okay. All right. 5 MR. BENSON: Mr. Szilagyi, we talked 6 about -- 7 THE WITNESS: Wow. 8 MR. BENSON: I'm sorry. 9 THE WITNESS: Wow. 10 MR. BENSON: I'm sorry. I was reading 11 a document called -- we aren't going that long. 12 Sorry. 13 THE WITNESS: Man. Did I -- did I -- 14 maybe I must have done something -- 15 MR. ZILIAK: In the next interview. 16 MR. BENSON: No. We're -- you'll see 17 that I'm reading it out of the -- Mr. Szilagyi. 18 I don't have anything for Mr. Szilagyi today. 19 You go, Jake. Sorry. 20 BY MR. SCHMIDT: 21 Q Okay. I'm showing you what's been 22 marked now as 67. 23 (SEC Exhibit No. 67 was 24 marked for identification.) 25 BY MR. SCHMIDT:</p>	<p>Page 683</p> <p>1 marked for identification.) 2 BY MR. SCHMIDT: 3 Q You can see there's a whole list of 4 financial advisors that get -- 5 A Sure. So. Right. 6 Q So really, it's the -- let's see, 1, 7 2, 3 -- the fourth page of Exhibit 70 that 8 starts with a Catalyst fund logo at the top, and 9 the title is, "Catalyst Hedged Futures Strategy 10 Fund Update: February 14, 2017"?</p> <p>11 A Yes. 12 Q Which is basically your e-mail or the 13 start of your e-mail. That's what it 14 corresponds to? 15 A Yes. 16 Q Do you agree with me? 17 A Oh, you're -- you're asking if it 18 corresponds to -- 19 Q Yeah. I'm asking if your draft, 20 right, or whatever e-mail your -- your language 21 you're sending, some form of it eventually ends 22 up in this communication that's sent out to 23 investment advisors? 24 A Yes. 25 Q Okay. So look back --</p>

<p style="text-align: right;">Page 690</p> <p>1 A Yes. As I said, a poor choice of 2 words on my part.</p> <p>3 Q To your knowledge, have you ever used 4 similar, definite language like that to say, 5 "When the market rises rapidly, the fund NAV 6 will decline"?</p> <p>7 A I don't recall if I have or not.</p> <p>8 Q Okay. Any time that you've done that, 9 that is simply a mistake, and it's just a 10 mistake that you repeated numerous times, if you 11 have, right?</p> <p>12 A Exactly, because the intent is -- I 13 think my previous testimony is -- is accurate in 14 that, if the market pops rapidly, the fund NAV 15 can decline. But even as I suggest in the 16 e-mail, we want the market to go higher. So 17 there will be times when the fund NAV or the 18 market pops rapidly that the fund benefits.</p> <p>19 Q You've experienced that the -- a rapid 20 increase in the market benefits to the futures 21 fund?</p> <p>22 A Yes.</p> <p>23 Q When did that happen?</p> <p>24 A I don't recall exactly, but I can 25 describe the scenario for you.</p>	<p style="text-align: right;">Page 692</p> <p>1 BY MR. SCHMIDT: 2 Q Okay. 3 A -- so maybe it should say "could" or 4 "will," but it depends on the context when -- 5 and typically that's in response to a question. 6 So the question -- I would answer the 7 question based on the positioning of the 8 portfolio and the market at that time. 9 Q So any statements you've made over 10 time about what happens to the fund during a 11 rapidly rising market only relate to if the 12 market rises rapidly at that time and they're 13 not general statements about how a rapidly 14 rising market affects the fund? Is that your 15 testimony? 16 A No. 17 Q Okay. 18 A Sometimes I'm responding to a specific 19 question at a specific time, and I will relate 20 my answer to the portfolio positioning at that 21 time. 22 Sometimes I'm describing a general 23 behavior characteristic of the fund that 24 suggests return opportunities are more difficult 25 in a rapidly rising market.</p>
<p style="text-align: right;">Page 691</p> <p>1 Q Okay. So that's -- so your testimony 2 is that this should say "could," and when you 3 said "will decline," it was a mistake, and any 4 similar statements you've made that don't use 5 words like "could" or "may" and use words like 6 "will" and "definite," those are all mistakes? 7 A Well, it's -- it -- 8 Q I just want to know -- right? 9 MR. BYLINA: Well, we'll just say 10 all -- 11 THE WITNESS: Exactly. It depends on 12 context. 13 So in this particular e-mail, for 14 example, in this scenario on March 23rd, the 15 portfolio is positioned in a way that, yes, if 16 the market pops rapidly, the fund NAV will 17 decline, but that's not always true. 18 And "pops rapidly" is a very 19 indefinite concept. 20 So the idea is to advise -- if she's 21 speaking to someone, I don't know who, but if 22 she gets questions, yes, the way we're 23 positioned right now at this moment in time and 24 the market pops rapidly, the fund NAV will 25 decline. It's not always true so --</p>	<p style="text-align: right;">Page 693</p> <p>1 Q Okay. 2 BY MR. BENSON: 3 Q Mr. Walczak, did you ever communicate 4 to Mr. Szilagyi the risks associated with a 5 rapidly rising market to the fund? 6 A I'm certain that I did at some point, 7 again, in -- in the general descriptor that 8 rapidly rising markets can be a difficult 9 environment for the fund. 10 Q Right. And my question is: Did you 11 ever share that with Mr. Szilagyi? 12 A I'm certain that I did, yes. 13 Q Okay. And did you ever have any 14 discussions with Mr. -- Mr. Szilagyi as to 15 whether that risk should be disclosed to the 16 investing public? 17 A I didn't have any specific discussions 18 about disclosure, no. 19 Q Okay. So we've talked a lot about 20 risk metrics for the futures fund today -- 21 A Yes. 22 Q -- right? 23 And we looked at documents, like 24 Exhibit 41, that are these daily risk reports, 25 right?</p>

<p style="text-align: right;">Page 694</p> <p>1 A Yes.</p> <p>2 Q Okay. Can you tell me who monitored 3 the risk metrics for the futures fund from 2015 4 through 2017?</p> <p>5 A I don't know for sure. Somewhere in 6 there, George Amhrein was appointed as a risk 7 officer because he and I collaborated on 8 formalizing those metrics for the fund.</p> <p>9 Q Okay. So George Amhrein.</p> <p>10 A Uh-huh.</p> <p>11 Q Anyone else?</p> <p>12 A I -- there's distribution lists at 13 various times.</p> <p>14 Q Okay. So like, for example, on 15 Exhibit 41, Zach Kavajecz?</p> <p>16 A Yeah. He was one of our interns. So, 17 right.</p> <p>18 Q George Amhrein, August Ewald.</p> <p>19 A Another intern.</p> <p>20 Q Yourself, Kim Rios.</p> <p>21 A Yes.</p> <p>22 Q Are those the people that monitored 23 the risk metrics for the futures fund, as far as 24 you're aware?</p> <p>25 A They were certainly aware of it. For</p>	<p style="text-align: right;">Page 696</p> <p>1 it, we did provide them instructions about 2 essentially what those things meant.</p> <p>3 Q Did you or did Ms. Rios?</p> <p>4 A Some combination of the two of us.</p> <p>5 Q Okay. Are you aware of any external 6 risk managers that were responsible for 7 monitoring the risk metrics for the futures 8 fund?</p> <p>9 A Those specific risk metrics, external 10 risk managers, I'm not aware.</p> <p>11 Q Okay. I hand you SEC Exhibit 22. 12 (SEC Exhibit No. 22 was 13 marked for identification.)</p> <p>14 BY MR. BENSON:</p> <p>15 Q I'm trying to solve a mystery here. 16 So you're not on this e-mail chain, but Exhibit 17 22, which should bear Bates stamp 18 SEC_01_0028481, is an e-mail from Kim Rios to 19 Paul Regger and Jeremy O'Keefe where she 20 attaches various marketing materials related to 21 the hedged futures fund, including the HFXAX 22 presentation for the second quarter of 2016, 23 which begins one, two, three -- at the fourth -- 24 fourth page of Exhibit 22.</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 695</p> <p>1 example, the two interns aren't doing any 2 monitoring, really, unless we specifically asked 3 them to do something.</p> <p>4 Q Actually, if we had talked to the 5 interns, and they said that one of their job 6 descriptions was to actually monitor these daily 7 e-mails and report to you any concerns, would 8 you agree or disagree with that statement?</p> <p>9 A Depending on what point and time. I 10 do recall giving those instructions at certain 11 points in time, but, you know, Zach is no longer 12 with us.</p> <p>13 Q Uh-huh.</p> <p>14 A I'm confident that August is not 15 monitoring risk profiles right now.</p> <p>16 Q And you didn't give those college 17 interns any specific training on what the 18 risk -- risk metrics meant and what they should 19 be looking for. You just told them to determine 20 if the -- if there had been breaches, correct?</p> <p>21 A I -- I don't recall specifically other 22 than both of those interns, I believe, in fact, 23 were instructed in the concepts and the 24 strategy.</p> <p>25 To what extent they fully understood</p>	<p style="text-align: right;">Page 697</p> <p>1 A Yes.</p> <p>2 Q Okay. And if you look to the sixth 3 page of that presentation, it says, "Investment 4 strategy: Training methodology." And then there 5 are four bullet points.</p> <p>6 The fourth bullet point says, "Risk 7 control is an important participant of the 8 strategy; risk metrics are also monitored by an 9 external risk manager"?</p> <p>10 A Yes.</p> <p>11 Q Trying to figure out who that is.</p> <p>12 A That means external to the portfolio 13 management team.</p> <p>14 Q Oh. So who are you referring to?</p> <p>15 A George Amhrein, I think, at this time 16 frame.</p> <p>17 Q Okay.</p> <p>18 A I am sure it would be him.</p> <p>19 Q So let me get this straight.</p> <p>20 Catalyst -- this -- this presentation, it's -- 21 on the cover it says, "Catalyst fund."</p> <p>22 A Yes.</p> <p>23 Q Who I believe employees George 24 Amhrein?</p> <p>25 A In some form, yeah.</p>

<p>1 Q Yet -- and actually, on Slide 6, it's 2 got the Catalyst Fund's insignia?</p> <p>3 A Yes.</p> <p>4 Q Yet it says that it's monitored by an 5 external risk manager?</p> <p>6 A Yes.</p> <p>7 Q So Catalyst Fund is providing its own 8 presentation, saying that there's an external 9 risk manager, but they're really just 10 implying -- but that they're really referencing 11 their own employee -- internal employee.</p> <p>12 A Yes. As I -- as I testified, external 13 refers to external to the portfolio management 14 team. That was -- that was very often a 15 question by advisors about: All right. Is 16 there anybody looking over your shoulder when 17 you're managing the fund?</p> <p>18 Q And this actually goes back to an 19 issue we talked about a lot earlier.</p> <p>20 You were not disclosed publically or, 21 frankly, even to the board of trustees in Mutual 22 Fund Series Trust as being a subadvisor.</p> <p>23 For all intents and purposes -- all 24 intents and purposes, the investing public and 25 the board of trustees in Mutual Fund Series</p>	<p>Page 698</p> <p>1 Q So what experience are you referring 2 to?</p> <p>3 A Personal experience with evaluating 4 investments and other mutual funds.</p> <p>5 Q Okay. So had you done a survey of '40 6 Act funds to understand what was common and what 7 was uncommon among their risk management 8 strategies?</p> <p>9 A No, I did not.</p> <p>10 Q Okay. So I'm just trying to 11 understand what objective measure you were aware 12 of that was the support for, "This is not common 13 among public mutual funds."</p> <p>14 A Again, the things that I used to form 15 that opinion were personal investigation of 16 certain mutual funds, observation of mutual fund 17 performance, and correlation to -- the equity 18 market suggested to me that most mutual funds 19 had -- didn't have a risk management structure 20 in place, at least not as -- as I defined risk 21 management and we have in the fund.</p> <p>22 Q So was there a way that you were able 23 to, you know, look at internal policies and 24 procedures in other '40 Act funds to determine 25 whether they actually had written risk</p>
<p>1 Trust, they thought that you were a portfolio 2 manager of Catalyst, Capital Advisors, right?</p> <p>3 A I can't comment on what anyone else 4 thought, but --</p> <p>5 Q Fair question.</p> <p>6 A -- that's the function I served, yes.</p> <p>7 Q That's what all the representation 8 said.</p> <p>9 A Yes, and that's the function I served.</p> <p>10 Q Okay. And then I'd like you to turn 11 to Page 9 of that same presentation, which is 12 entitled, "Risk Management," and there are two 13 bullet points.</p> <p>14 The second bullet point says, "The 15 fund employees a distinct risk management 16 strategy. In addition to the strategy and 17 tactics we use to earn profits, we use a 18 specific set of rules and tactics focused on 19 limiting losses. This is not common among 20 public mutual funds."</p> <p>21 Do you know what the basis is for the 22 sentence, "This is not common among public 23 mutual funds"?</p> <p>24 A That -- that was my experience based 25 on what I knew about public mutual funds.</p>	<p>Page 699</p> <p>1 management strategies?</p> <p>2 A No.</p> <p>3 Q Those are usually not publically 4 available, are they?</p> <p>5 A I don't know.</p> <p>6 Q Are you aware of anyone at Catalyst 7 or -- or even Ms. Rios or yourself speaking with 8 any professors at the University of Wisconsin -- 9 University of Wisconsin, Madison, about a survey 10 of public mutual funds and what their risk 11 management strategies were or were not?</p> <p>12 A We had interactions with Wisconsin and 13 professors, but I don't recall that being a 14 topic.</p> <p>15 Q That's something that you would 16 anticipate them seeking compensation for such a 17 study, right?</p> <p>18 A I -- I have no idea.</p> <p>19 Q But you're not aware of getting any 20 results of the study or -- or anything from any 21 professor at the University of Wisconsin, right?</p> <p>22 A I don't recall, no.</p> <p>23 MR. SCHMIDT: Do you recall paying 24 anybody, whether it's a Wisconsin professor or 25 anybody else, to figure out the answer to this</p>

<p>1 question?</p> <p>2 THE WITNESS: No.</p> <p>3 MR. SCHMIDT: Do you remember running</p> <p>4 the statement by the chief risk officer of</p> <p>5 Catalyst to see whether he had any opinion about</p> <p>6 whether this statement was accurate?</p> <p>7 THE WITNESS: No. As -- as with every</p> <p>8 document that Catalyst asked me to prepare, I</p> <p>9 sent it to them relying on them to identify any</p> <p>10 misstatements or concerns they had about</p> <p>11 accuracy.</p> <p>12 BY MR. BENSON:</p> <p>13 Q And -- and did you write the sentence,</p> <p>14 "This is not common among public mutual</p> <p>15 funds" --</p> <p>16 A Yes.</p> <p>17 Q -- at the time?</p> <p>18 A Yes.</p> <p>19 Q Thank you. So remember earlier today</p> <p>20 we talked about the word "strict," as that was</p> <p>21 used to describe the risk management procedures</p> <p>22 of the futures fund?</p> <p>23 A I remember we had a conversation about</p> <p>24 it, yes.</p> <p>25 Q And I think you had expressed the</p>	<p>Page 702</p> <p>1 Q Okay. If you didn't write it, do you</p> <p>2 know who could have?</p> <p>3 A I -- I think we've -- we've talked</p> <p>4 before about who's involved in preparing the</p> <p>5 prospectus, and I'm not really certain.</p> <p>6 Q Did you ultimately review and approve</p> <p>7 that sentence?</p> <p>8 A I don't recall specifically.</p> <p>9 Q Sitting here today, do you believe</p> <p>10 that that statement is accurate, that "The fund</p> <p>11 employs strict risk management procedures to</p> <p>12 adjust portfolio exposure as necessitated by</p> <p>13 changing market conditions"?</p> <p>14 A As I -- as I read, you know, my</p> <p>15 interpretation and meaning of that word, I would</p> <p>16 say, yes, it's accurate.</p> <p>17 Q Okay. And that's your subjective</p> <p>18 interpretation; is that what you're saying? Or</p> <p>19 are you say, objectively, you feel that that's</p> <p>20 an accurate statement?</p> <p>21 A I'm not sure what the difference is.</p> <p>22 Q Well, you prefaced your answer with,</p> <p>23 "Based on my interpretation?"</p> <p>24 A Yes. So how else would I answer that</p> <p>25 question exactly?</p>
<p>Page 703</p> <p>1 question as to where that adjective was used in</p> <p>2 public documents, right?</p> <p>3 A (Nodding head.)</p> <p>4 Q Regardless of whether you disagree --</p> <p>5 agree or disagree with that, I'm going to hand</p> <p>6 you SEC Exhibit 25. I'm going to ask you to</p> <p>7 look to --</p> <p>8 (SEC Exhibit No. 25 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. BENSON:</p> <p>11 Q If you look at the upper right-hand</p> <p>12 corner, it's Page 23 of 261.</p> <p>13 A Okay. I -- I'm here.</p> <p>14 Q You see "Principal Investment</p> <p>15 Strategies"?</p> <p>16 A Yes.</p> <p>17 Q The third paragraph, final sentence</p> <p>18 says, "Supported by sophisticated options</p> <p>19 analysis software, the fund employs strict risk</p> <p>20 management procedures to adjust portfolio</p> <p>21 exposure as necessitated by changing market</p> <p>22 conditions," right?</p> <p>23 A Yes.</p> <p>24 Q Did you write that language?</p> <p>25 A I don't recall if I did.</p>	<p>Page 705</p> <p>1 Q Fair point. Okay. That's fine.</p> <p>2 Okay. Okay. We talked earlier about</p> <p>3 how you were a member of the National Futures</p> <p>4 Association, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. And you ceased being an active</p> <p>7 member of the National Futures Association in, I</p> <p>8 believe, it was August of -- was it 2015?</p> <p>9 A I think that's correct.</p> <p>10 Q Okay. And at that same time, you</p> <p>11 de-registered your Harbor Fund from CFTC</p> <p>12 registration as well?</p> <p>13 A Well, what I de-registered was not the</p> <p>14 Harbor fund but Harbor Financial, the entity,</p> <p>15 yeah.</p> <p>16 Q Yes. I -- I appreciate that. And</p> <p>17 Harbor Financial, L.L.C., was, up until that</p> <p>18 point, registered with the CFTC as a CTA,</p> <p>19 Commodity Trading Advisor, correct?</p> <p>20 A Correct.</p> <p>21 Q Okay.</p> <p>22 MR. SCHMIDT: And at that point, 2015,</p> <p>23 the Harbor fund didn't exist anymore. It had</p> <p>24 since converted to the futures fund, right?</p> <p>25 THE WITNESS: Correct.</p>

<p style="text-align: right;">Page 706</p> <p>1 MR. SCHMIDT: Okay. I just wanted to 2 make that clear. 3 BY MR. BENSON: 4 Q But you had continued to be the 5 managing member and the portfolio manager of 6 Harbor Financial, L.L.C., a CTA, because that 7 entity advised various separately managed 8 accounts? 9 A Correct. And just for -- again, for 10 accuracy, in that regime, the term "portfolio 11 manager" I'm not sure has any significance. I 12 was a -- that entity was registered as a 13 Commodity Trading Advisor. I was a -- the 14 principal. 15 Q Okay. So did you make Catalyst aware 16 at any point that you were a principal, as you 17 just used that word, of Harbor Financial, 18 L.L.C.? 19 A Yes. 20 Q And you also made them aware that 21 Harbor Financial, L.L.C., was a registered CTA, 22 correct? 23 A Yes. 24 Q Okay. And you were specific with 25 them. You told them that beginning in 2005,</p>	<p style="text-align: right;">Page 708</p> <p>1 Managing Member and Portfolio Manager of Harbor 2 Financial, L.L.C., a registered Commodity Trader 3 Advisor from 2005 to the present," right? 4 A Yes. 5 Q Well, that's actually not a true 6 statement in connection with SEC Exhibit 86, is 7 it? 8 A Where is 86? 9 Q That's the one you're looking at right 10 now? 11 A Okay. It's -- it's incorrect in that 12 it doesn't put the end date on my service as a 13 CTA. 14 Q Right. So I'm just trying to 15 understand what -- did you inform Catalyst when 16 Harbor Financial no longer was registered as a 17 CTA? 18 A To the best of my recollection, I did 19 because I informed them at the time I stopped 20 managing separately managed accounts. 21 Q And they could have also easily 22 determined whether that statement was accurate 23 as of June 30th, 2016, by going to the CFTC's 24 website, correct? 25 A And NFA's website, yeah.</p>
<p style="text-align: right;">Page 707</p> <p>1 Harbor Financial, L.L.C., became registered as a 2 CTA, right? 3 A I think that's when they were 4 registered, yes. But whatever the registration 5 was, yeah, I made them aware of that. 6 Q And were you aware that in connection 7 with the hedged commodity strategy fund that 8 Catalyst used the fact that you were a principal 9 of Harbor Financial, L.L.C., a registered 10 Commodity Trading Advisor from 2005 onward, as 11 participate of their marketing material? 12 A You're asking me if I was aware that 13 they used that information? 14 Q Yeah? 15 A It's -- it's written on fact sheets as 16 a part of my background, yes. 17 Q Right. So I'm going to hand you SEC 18 Exhibit 86. 19 And if you look at the second page of 20 SEC Exhibit 86, on the right-hand side, it says, 21 "Fund Management," correct? 22 A Yes. 23 Q And then, "Investment Advisor, 24 Catalyst Capital Advisors, L.L.C., Edward S. 25 Walczak, Senior Portfolio Manager, Personal</p>	<p style="text-align: right;">Page 709</p> <p>1 Q And NFA's website. That's exactly 2 right? 3 So do you know how it's possible that 4 Exhibit 86 was made available to the public with 5 that incorrect fact? 6 A All I can say it was -- it was 7 overlooked by all the people that reviewed it. 8 Q And -- and who at Catalyst would have 9 been -- had the ultimate responsibility for 10 ensuring the accuracy of Exhibit 86? 11 A I don't know. 12 Q Would it have been Robert Glass as the 13 CCO? 14 A In terms of marketing material like 15 this, I'm not certain that his responsibilities 16 extend to this. 17 Q Would it -- would you have had any -- 18 had any responsibility for ensuring the accuracy 19 of that statement? 20 A I would likely have been asked to 21 review this document. 22 Q Okay. And do you recall doing so? 23 A The -- I don't recall specifically on 24 the commodity fund that I reviewed the -- the 25 commodity fund. It -- it's possible that I had</p>

<p>1 Kimberly look at it.</p> <p>2 Q And if the same inaccurate statement</p> <p>3 was included in the Futures Strategy Fund, would</p> <p>4 you have reviewed that?</p> <p>5 A Yes. Very likely.</p> <p>6 Q Okay. Are you familiar with the TCG</p> <p>7 Cash Reserve Money Market Fund?</p> <p>8 A Yes.</p> <p>9 Q Are you familiar with the TCG Premier</p> <p>10 Money Market Fund?</p> <p>11 A I should qualify my answer. I know</p> <p>12 what the T -- I think I know a little bit about</p> <p>13 what the TCG Funds are.</p> <p>14 Q Okay. What is your understanding of</p> <p>15 what the TCG Funds are?</p> <p>16 A They are money market funds that</p> <p>17 invest in -- I want to say bank deposits with --</p> <p>18 the nut of it is they're not quite as liquid as</p> <p>19 a normal money market fund and yield a little</p> <p>20 bit higher, and I think they do that by</p> <p>21 jockeying deposits around to different banks.</p> <p>22 Q So how did you come to understand that</p> <p>23 they're not as liquid as other money market</p> <p>24 funds?</p> <p>25 A Well, those funds were presented to me</p>	<p>Page 710</p> <p>1 So we -- but there was -- you know, I was</p> <p>2 favorably inclined to the extra yield for the</p> <p>3 fund, and we agreed on a very small portion of</p> <p>4 hedged futures, such that it wouldn't present</p> <p>5 any risk -- liquidity risk to the fund.</p> <p>6 I think he told me we got them in a</p> <p>7 week. So we had a small portion in, knowing that</p> <p>8 there was basically no possibility that we would</p> <p>9 need those assets in less than a week.</p> <p>10 Q And a couple questions on that. When</p> <p>11 did -- when did you have the first conversation</p> <p>12 about the TCG funds and their liquidity</p> <p>13 attributes with Mr. Szilagyi?</p> <p>14 A I don't know.</p> <p>15 Q Was it in 2018?</p> <p>16 A No.</p> <p>17 Q 2016?</p> <p>18 A I'm pretty sure we had assets in TCG</p> <p>19 during all of 2017. So, likely, 2016 or maybe</p> <p>20 even earlier, but likely before 2017.</p> <p>21 Q Do you remember Ms. Rios ever</p> <p>22 suggesting to you that because of the liquidity</p> <p>23 challenges of the TCG funds that the hedged</p> <p>24 futures fund reduces exposure to the TCG funds?</p> <p>25 A We had discussions from time to time.</p>
<p>Page 711</p> <p>1 as an income-producing alternative, which is</p> <p>2 something hedged futures does and hedged</p> <p>3 commodity because a lot of the fund's capital is</p> <p>4 in cash by, I think, Mr. Szilagyi.</p> <p>5 Q Right. And did you know that Mr.</p> <p>6 Szilagyi has an ownership interest in the TCG</p> <p>7 Funds?</p> <p>8 A I don't recall if he -- if he told me</p> <p>9 about that or not.</p> <p>10 Q Okay.</p> <p>11 A I think -- no, actually he did. He</p> <p>12 did.</p> <p>13 Q You would have wanted to know that, I</p> <p>14 assume?</p> <p>15 A Well, I'm not sure it's something I</p> <p>16 would have thought to ask --</p> <p>17 Q Uh-huh.</p> <p>18 A -- but I believe he disclosed it to</p> <p>19 me.</p> <p>20 Q Did you have the opportunity to invest</p> <p>21 in any money market fund, or were you directed</p> <p>22 by Mr. Szilagyi to use the TCG funds?</p> <p>23 A He -- he suggested that we use them,</p> <p>24 and we discussed -- he mentioned the issue that</p> <p>25 they were not quite as liquid as regular funds.</p>	<p>Page 713</p> <p>1 I think it was more actually relevant to the</p> <p>2 commodity fund because it was a higher</p> <p>3 percentage of the commodity fund assets in -- in</p> <p>4 the TCG funds.</p> <p>5 Q Well, here's Exhibit 79, and see if</p> <p>6 this is -- this refreshes -- if this is an</p> <p>7 example of Ms. Rios suggesting that the hedged</p> <p>8 futures fund, which is HFXAX, should reduce its</p> <p>9 TCG position.</p> <p>10 (SEC Exhibit No. 79 was</p> <p>11 marked for identification.)</p> <p>12 THE WITNESS: Yeah. Again, we had</p> <p>13 several conversations. I'm -- I'm, again, not</p> <p>14 completely convinced that she's referring</p> <p>15 specifically to hedged futures as opposed to</p> <p>16 hedged commodity. It was a larger position in</p> <p>17 hedged commodity.</p> <p>18 She was very interested in -- in</p> <p>19 moving on to different fixed income instruments.</p> <p>20 BY MR. BENSON:</p> <p>21 Q Okay. Did you understand that the TCG</p> <p>22 Money Market Funds that -- the futures fund</p> <p>23 invested in had exposure to Venezuelan and</p> <p>24 Brazilian bank bonds?</p> <p>25 A No.</p>

<p>1 Q Would that have mattered to you?</p> <p>2 A It would have asked -- caused me to</p> <p>3 ask some more questions about -- if that</p> <p>4 presented a meaningful risk, certainly.</p> <p>5 Q Are you aware that there are specific</p> <p>6 rules and regulations surrounding what assets a</p> <p>7 money market fund can hold if it's held out as a</p> <p>8 money market fund?</p> <p>9 A Again, I'm not at all familiar with</p> <p>10 those rules.</p> <p>11 Q So would it have mattered to you if</p> <p>12 you learned that the funds that were named the</p> <p>13 TCG Cash Reserve Money Market Fund and the TCG</p> <p>14 Premiere Money Market Fund actually held</p> <p>15 ineligible assets; in other words, assets that</p> <p>16 by definition could not be held by a fund that</p> <p>17 was marketed as a money market fund?</p> <p>18 A I'm -- certainly, if I was aware that</p> <p>19 there was some potential violation of a rule or</p> <p>20 regulation, I would have had to investigate</p> <p>21 immediately, certainly.</p> <p>22 Q And would it have mattered to you if</p> <p>23 you came to learn that the assets that were held</p> <p>24 in these two money market funds were not demand</p> <p>25 deposits but had longer maturities, like seven</p>	<p>Page 714</p> <p>1 Q Okay. So the futures fund did have an</p> <p>2 investment in the -- in Prime Meridian, right?</p> <p>3 A Yes.</p> <p>4 Q And do you know approximately how</p> <p>5 large of an investment the futures fund had in</p> <p>6 Prime Meridian as the start -- as of the start</p> <p>7 of 2017?</p> <p>8 A I want to -- it's -- it -- it was</p> <p>9 probably -- see, 2017, I'm thinking percentages</p> <p>10 in my mind because we went -- we did a lot of</p> <p>11 investigation on characterizing that security,</p> <p>12 understanding how much, if at all, we could hold</p> <p>13 in the fund.</p> <p>14 It -- that discussion went to the</p> <p>15 board of trustees, I know for sure, to get</p> <p>16 approval for that investment.</p> <p>17 BY MR. SCHMIDT: Who's "we" when you</p> <p>18 say, "we" investigated a lot?</p> <p>19 THE WITNESS: Really, myself, and --</p> <p>20 and Ms. Rios was involved in some of the</p> <p>21 legwork. But we also had Catalyst involved.</p> <p>22 Again, George Amhrein was on that</p> <p>23 project. Jerry Szilagyi was certainly aware of</p> <p>24 it. And as I said, we went to the board to</p> <p>25 clarify that this investment was suitable for</p>
<p>1 days?</p> <p>2 A Well, I believe I understood that,</p> <p>3 that they had longer maturities; hence, their</p> <p>4 lack of liquidity relative to a, quote, unquote,</p> <p>5 normal money market fund.</p> <p>6 Q Okay. And then just -- do you know</p> <p>7 what the prime -- Prime Meridian Investment --</p> <p>8 do you know what Prime -- Prime Meridian</p> <p>9 Investment means?</p> <p>10 A Yes.</p> <p>11 Q What does that mean?</p> <p>12 A It's a private placement fund that</p> <p>13 invests in short-duration, two-year-ish consumer</p> <p>14 loans. They -- they buy loans from people</p> <p>15 like -- I don't know. I -- I -- the names are</p> <p>16 jumping out of my head now. The online lenders.</p> <p>17 Q Like Lending Tree?</p> <p>18 A Exactly. That -- that group. So this</p> <p>19 is a fund that buys those loans, package --</p> <p>20 well, they -- they -- they buy them, and they</p> <p>21 service the loans or they contract and service</p> <p>22 the loans.</p> <p>23 So that, again, is another</p> <p>24 fixed-income vehicle that we invest some of the</p> <p>25 fund's cash in.</p>	<p>Page 715</p> <p>1 our fund.</p> <p>2 So in terms of how much we had, that I</p> <p>3 don't recall.</p> <p>4 I do remember we kept it to -- my</p> <p>5 recollection is we kept it to a percentage much</p> <p>6 smaller than we would have been allowed to by</p> <p>7 regulation.</p> <p>8 BY MR. BENSON:</p> <p>9 Q But your understanding is that the</p> <p>10 board approved that investment?</p> <p>11 A Yes. That's my understanding.</p> <p>12 Q Okay. I'm handing you Exhibit 126,</p> <p>13 and I believe this is the last exhibit of the</p> <p>14 day for me.</p> <p>15 (SEC Exhibit No. 126 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. BENSON:</p> <p>18 Q I'm just trying to understand what's</p> <p>19 going on here. It seems like Robert Glass, who</p> <p>20 is the CCO of -- Chief Compliance Officer of</p> <p>21 Catalyst, Capital Advisors is e-mailing you that</p> <p>22 he's got a question from the CCO of the trust,</p> <p>23 which I understand is Mutual Fund Series Trust,</p> <p>24 asking whether hedged futures would be able to</p> <p>25 liquidate its investment in Prime Meridian in</p>

<p style="text-align: right;">Page 718</p> <p>1 seven days, and then you and Ms. Rios exchange 2 answers; is that right? 3 A Yes. 4 Q Okay. So do you know why Mr. Glass 5 was asking about, you know, how quickly this 6 Prime Meridian investment could be liquidated? 7 A Well, it appears he's responding to a 8 question from his counterpart at the trust 9 level. 10 Q Okay. And do you know who that person 11 is? 12 A No. 13 Q And do you know why the trust was 14 asking about the liquidity of that investment? 15 A No. 16 Q Okay. And you never -- did you have 17 any discussions with the board of trustees about 18 that investment yourself? 19 A I did not personally, no. 20 Q Okay. 21 BY MR. SCHMIDT: Do you know of any 22 subsequent developments, interactions, 23 discussions about this issue after this e-mail? 24 THE WITNESS: We ultimately -- well, 25 we had already at this time invested in the</p>	<p style="text-align: right;">Page 720</p> <p>1 no question. I can figure it out. 2 MR. BENSON: I'm good. It's late. I 3 appreciate all your time over the past few days. 4 If you just go -- if we have a quick 5 two-minute off-the-record conversation -- 6 MR. SCHMIDT: We are off at 5:53. 7 (A brief recess was taken.) 8 MR. SCHMIDT: All right. We're back 9 on the record, 5:54 p.m. 10 MR. BENSON: We didn't have any 11 substantive conversations while we were off the 12 record for that one minute, did we? 13 THE WITNESS: We did not. 14 MR. BENSON: Okay. 15 BY MR. SCHMIDT: 16 Q Okay. Other than conversations 17 with -- you've had with counsel, have you talked 18 to anybody else about appearing here yesterday 19 and today? 20 A Only that I was scheduled to appear. 21 No discussions about substance or topics. 22 Q Okay. 23 MR. BENSON: The question really 24 focuses between last night when we ended and 25 this morning.</p>
<p style="text-align: right;">Page 719</p> <p>1 fund, and so we continued to monitor. In fact, 2 we're -- we're liquidating the investment now on 3 a gradual basis to keep our percentage 4 investment down. 5 MR. SCHMIDT: Was part of the response 6 you got back that you needed to do that, or was 7 that a separate decision you made independently 8 of anything that somebody at Catalyst or the 9 board told you? 10 THE WITNESS: We made the decision at 11 the portfolio level. 12 MR. SCHMIDT: You and Ms. Rios? 13 THE WITNESS: Yes. Ultimately, I did. 14 MR. SCHMIDT: Okay. 15 BY MR. BENSON: 16 Q One just overreaching question that 17 I'm seeing across all the different documents, 18 it seems as though at times, you and Ms. Rios 19 hold yourselves out as being part of Catalyst, 20 and then other times, you hold yourselves out as 21 being -- we're the portfolio management team, 22 and then you've got New York and Catalyst as 23 external or -- or doing their own thing. 24 And can you help me understand why -- 25 why that is in terms of how -- actually, there's</p>	<p style="text-align: right;">Page 721</p> <p>1 THE WITNESS: Oh, I'm sorry. 2 MR. BENSON: Yeah, overnight. 3 THE WITNESS: No. 4 MR. BENSON: Okay. 5 BY MR. SCHMIDT: 6 Q No calls with anybody? 7 A No. 8 Q And the same question just about the 9 investigation, generally, not limited to your 10 appearance here today: Have you talked to 11 anybody about the investigation, generally, not 12 counsel, between yesterday and today? 13 A Oh, between yesterday and today, no. 14 Q Okay. Are there any specific things 15 that we've talked about today where you didn't 16 know the answer to or, you know, just were 17 unsure of what might be the right answer or the 18 right document to look at that you can think 19 that somebody else might be the best person to 20 go to? 21 A We've covered a lot of ground. I 22 can't -- 23 Q I know. I'm just saying -- 24 A Sure. 25 Q -- if there's anything that you're</p>

<p style="text-align: right;">Page 722</p> <p>1 like, you know, I know somebody knows the answer 2 to that and it's really this guy or this woman. 3 Anything like that? 4 A No. I -- I think I would have told 5 you at the time. 6 Q Okay. Big picture in terms of the 7 prospectus and the fact sheets and the drafting 8 finalization and review of that, that's all in 9 New York, as far as you're concerned? Other 10 than the pieces that you've talked about, you 11 don't know who in New York, but it's somebody at 12 Catalyst New York. 13 A Correct. 14 Q Okay. Okay. Before we complete the 15 record, is there anything you want to clarify, 16 add, or have in addition to any of the 17 statements you've made today? 18 MR. ZILIAK: Well, in the words of -- 19 a wise man once said that there's a lot to 20 unpack there. 21 Can we have just -- have just a couple 22 minutes to talk with our client about that? 23 MR. BENSON: Yeah. 24 MR. SCHMIDT: Of course. 25 We're off the record at 5:56.</p>	<p style="text-align: right;">Page 724</p> <p>1 THE WITNESS: No. 2 MR. ZILIAK: Where else does it come 3 up, for example? 4 THE WITNESS: It's commonly used in 5 manufacturing and other processes. 6 Manufacturing processes are very common. 7 MR. ZILIAK: Can you tell us a little 8 bit about how SPC works? 9 THE WITNESS: Sure. SPC is -- is 10 designed to identify process parameters and 11 limitations such that, when the process is 12 running normally, those limitations are not 13 exceeded. And when they are exceeded, that 14 indicates there's something wrong or needs 15 corrective action so that -- it -- it's very 16 common in manufacturing to -- or it's common in 17 manufacturing where SPC is not used to tend to 18 overcorrect a process, meaning, your -- your 19 output isn't what you'd like it to be because 20 you're constantly adjusting the machine, for 21 example. 22 So SPC was developed to identify 23 levels of process parameters that would indicate 24 when it's truly necessary to take some action. 25 So -- so that's kind of a description of -- of</p>
<p style="text-align: right;">Page 723</p> <p>1 (A brief recess was taken.) 2 E V E N I N G S E S S I O N 3 BY MR. SCHMIDT: 4 Q Back on the record at 6:16 p.m. 5 Mr. Walczak, no substantive 6 discussions with the staff of the SEC or CFTC 7 during the break? 8 A That is correct. 9 Q Okay. At this time I think your 10 counsel is going to ask you some questions. 11 Okay? 12 A Yes. 13 MR. ZILIAK: Great. So, Mr. Walczak, 14 I believe you said earlier in your testimony 15 yesterday and today that you sometimes use -- or 16 commonly use statistical process control in 17 managing the hedged futures fund; is that 18 correct? 19 THE WITNESS: That's correct. 20 MR. ZILIAK: Statistical process 21 control, do you mind if I just call it SPC for 22 short in this? 23 THE WITNESS: Sure. 24 MR. ZILIAK: Is SPC a concept specific 25 to and unique to the trading industry?</p>	<p style="text-align: right;">Page 725</p> <p>1 SPC. 2 MR. ZILIAK: So we've been steeped in 3 this trading world for a little while. Just to 4 put some flesh on the bones here, can you give 5 me an example of -- in the -- in broader 6 industry how someone could use SPC? 7 You talked about how, without SPC, 8 people sometimes overcorrect, tweak a machine 9 too frequently. 10 How does -- how does the SPC 11 equivalent play out? 12 THE WITNESS: So in -- in 13 manufacturing, for example, again, from -- from 14 my experience in high-speed packaging, a typical 15 example would be a packaging machine that's 16 packaging or -- or capping bottles at a very 17 high rate of speed. Suddenly, a cap is 18 misplaced and flies off the line. 19 Now, if the SPC process says, for 20 example, that the parameter is no more than five 21 caps per hour are misplaced, then the first time 22 a cap comes off, no action is taken. And if -- 23 when the sixth cap in an hour period comes off, 24 then the -- the -- the action taken is to 25 call -- then call maintenance. But if -- if</p>

<p style="text-align: right;">Page 726</p> <p>1 that boundary is not exceeded, then the process 2 doesn't need adjusting. 3 MR. ZILIAK: Okay. Now, did you apply 4 SPC to your trading back at Harbor prior to the 5 conversion of the fund? 6 THE WITNESS: Yes, I did. 7 MR. ZILIAK: And you continue to apply 8 it now post-conversion? 9 THE WITNESS: Yes. 10 MR. ZILIAK: At this stage, I'd like 11 to refer back to what has previously been marked 12 as SEC Exhibit 112 please. 13 And I believe you previously testified 14 this is a presentation you gave to the board of 15 the Mutual Fund Series Trust. Perhaps it was in 16 May of 2013? 17 THE WITNESS: Yes. 18 MR. ZILIAK: And that was in 19 conjunction with Catalyst's seeking approval of 20 the conversion from the trust -- from the trust 21 board; is that correct? 22 THE WITNESS: Yes. 23 MR. ZILIAK: Now -- let me see. I'd 24 like you to turn please to -- I believe it's the 25 seventh page. This is Bates number</p>	<p style="text-align: right;">Page 728</p> <p>1 this presentation or most of it; is that 2 correct? 3 THE WITNESS: That's correct. 4 MR. ZILIAK: And Jerry Szilagyi and -- 5 Jerry Szilagyi saw this back in 2013? 6 THE WITNESS: Yes. 7 MR. ZILIAK: And this presentation was 8 given to the board of the trust in 2013? 9 THE WITNESS: Yes. 10 MR. ZILIAK: So is it fair to say that 11 Catalyst and indeed the trust had reason to know 12 as of 2013 that your trading methodology 13 involved six sigma or, more generally, SPC? 14 THE WITNESS: Correct. 15 MR. ZILIAK: All right. All right. 16 Thank you. And now I'd like to turn your 17 attention to what's been previously marked SEC 18 Exhibit 41. 19 Do you have that? 20 THE WITNESS: I have it. 21 MR. ZILIAK: So I believe this is what 22 is sometimes referred to as a Model Alpha report 23 in the past couple days? 24 THE WITNESS: Yes. 25 MR. ZILIAK: Who came up with this set</p>
<p style="text-align: right;">Page 727</p> <p>1 MFST000434 -- sorry, sorry -- 48398. 00048398, 2 it says at the top of the page, "What we do, and 3 how we do it." 4 I'm sorry. Have you found that? Yes. 5 Okay. That's the one. 6 THE WITNESS: Yes. 7 MR. ZILIAK: So in the top, I believe 8 you say, "Position and portfolio risk management 9 require robust analytical tools. We use" -- and 10 then there are two bullet points. "We use 11 OptionVue Software and six sigma control 12 charting." 13 Now, you discussed OptionVue Software 14 pretty extensively in the past few days. We 15 haven't mentioned six sigma before. Is six 16 sigma related to SPC? 17 THE WITNESS: Six sigma is a -- is 18 a -- a term that was used, popularized at 19 General -- General Electric by Jack Welsh in 20 terms of a problem-solving methodology based on 21 six sigma type of concepts. 22 MR. ZILIAK: And -- 23 THE WITNESS: Or SPC concepts. I'm 24 sorry. 25 MR. ZILIAK: Let's see. You drafted</p>	<p style="text-align: right;">Page 729</p> <p>1 of risk parameters? 2 THE WITNESS: I did. 3 MR. ZILIAK: And who came up with 4 these names for the risk parameters? 5 THE WITNESS: I did. 6 MR. ZILIAK: Who came up with the idea 7 of what should be done -- what kind of 8 correction -- corrective actions can be done in 9 response to these various risk trigger -- risk 10 parameters being triggered? 11 THE WITNESS: I did. 12 MR. ZILIAK: Can you explain how you 13 intended this to be used? 14 THE WITNESS: Sure. Well, by 15 explanation, it related to Exhibit 112, CFTC 16 Exhibit 112. This represents an expanded -- 17 MR. BENSON: Excuse me. SEC Exhibit 18 112. 19 THE WITNESS: Oh, I'm sorry, SEC 20 Exhibit 112. 21 This represents, essentially, an 22 expanded version of the trading dashboard that 23 was represented to the board, and so this risk 24 framework is essentially the control chart used 25 for the process I run at the mutual fund.</p>

<p style="text-align: right;">Page 730</p> <p>1 MR. ZILIAK: And when you talk about 2 control chart and a process, like you're control 3 and process and things, fiscal process control, 4 is this indeed then an implementation of fiscal 5 process control?</p> <p>6 THE WITNESS: That's how I do it, yes.</p> <p>7 MR. ZILIAK: And going back to your 8 point about how people who don't use SPC might 9 tweak the machine too frequently, what was your 10 intention of what should be done when -- when 11 one of these triggers sounded?</p> <p>12 THE WITNESS: In accordance with SPC 13 principles, the intention is that when one of 14 these triggers -- these metrics is triggered 15 that is essentially saying the process has gone 16 out of bounds, and, again, in the manufacturing 17 analogy, the maintenance team would be called to 18 determine what action should be taken, whether 19 the machine should be shut down, whether it 20 should simply be adjusted, or whether nothing 21 should be done.</p> <p>22 And in this case, the maintenance team 23 corresponds to Catalyst's risk committee.</p> <p>24 MR. ZILIAK: Now, this chart, was it 25 ever --</p>	<p style="text-align: right;">Page 732</p> <p>1 maintenance -- a maintenance guy or a 2 maintenance team and receive some kind of 3 instruction or collaborate on what should be 4 done next.</p> <p>5 MR. BENSON: So your example that you 6 gave us, if there's one cap that falls off, you 7 know, per hour, no problem, if the threshold is 8 five. But as soon as that sixth cap falls off, 9 then you gotta call the maintenance team and 10 figure out how to fix it, right?</p> <p>11 THE WITNESS: That's correct.</p> <p>12 MR. BENSON: Okay.</p> <p>13 MR. SCHMIDT: I'm sorry. I reason I 14 broke in is I thought you said that in the fund 15 context, the maintenance team is the risk 16 committee.</p> <p>17 THE WITNESS: Yes, or the risk advisor 18 or risk officer. In other words, a single 19 mechanic, a team of mechanics.</p> <p>20 MR. SCHMIDT: Okay. The only thing --</p> <p>21 THE WITNESS: -- outside help.</p> <p>22 MR. SCHMIDT: The only thing that 23 threw me was your earlier testimony is, to your 24 knowledge, that risks committee didn't exist 25 before mid-December 2016, and I just want to</p>
<p style="text-align: right;">Page 731</p> <p>1 MR. SCHMIDT: I'm sorry. What time 2 period are we talking about? Back in 2013? 3 When you're talking to the board? When are you 4 talking when you say instead of the maintenance 5 crew, it's the risk committee? I just want a 6 time frame for your statement.</p> <p>7 THE WITNESS: Well --</p> <p>8 MR. BENSON: Were you giving -- you 9 were just giving a hypothetical --</p> <p>10 THE WITNESS: Sure, yes.</p> <p>11 MR. BENSON: -- to -- to what would 12 happen on a manufacturing floor.</p> <p>13 THE WITNESS: Right.</p> <p>14 MR. BENSON: And if we understand you 15 correctly, you're referring to a risk 16 committee --</p> <p>17 THE WITNESS: As a maintenance team or 18 a --</p> <p>19 MR. BENSON: As a maintenance team. 20 Not -- not regarding trading at all, as a -- 21 like a -- like a physical manufacturing team?</p> <p>22 THE WITNESS: Yeah. So in a 23 manufacturing analogy, the -- the defect would 24 be -- defect rate would exceed a boundary. The 25 operator -- machine operator would call a</p>	<p style="text-align: right;">Page 733</p> <p>1 make sure you're not changing that testimony.</p> <p>2 THE WITNESS: No.</p> <p>3 MR. SCHMIDT: Okay. All right. Go 4 ahead.</p> <p>5 MR. ZILIAK: And just further to that 6 same point, regardless of who takes the next 7 action, is the typical response in SPC to a 8 triggered metric to turn the dials or figure out 9 what went wrong?</p> <p>10 THE WITNESS: The next thing would be 11 to figure out what went wrong to determine the 12 correct action, usually, with outside 13 assistance.</p> <p>14 MR. ZILIAK: Okay. Now, did you ever 15 give copies of Model Alpha reports like this to 16 investors?</p> <p>17 THE WITNESS: No.</p> <p>18 MR. ZILIAK: Who was the intended 19 audience of this?</p> <p>20 THE WITNESS: This was strictly an 21 internal management report.</p> <p>22 MR. ZILIAK: And outside -- that's the 23 Model Alpha reports?</p> <p>24 THE WITNESS: Yes. That's correct.</p> <p>25 MR. ZILIAK: Okay. Sorry. And just</p>

<p style="text-align: right;">Page 734</p> <p>1 for clarity, what I have been called Model Alpha 2 is the same as thing as what Manamu Solutions 3 sends to you, correct?</p> <p>4 THE WITNESS: That's correct.</p> <p>5 MR. ZILIAK: Okay.</p> <p>6 MR. BENSON: So, for example, Exhibit 7 41 is such a report?</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. ZILIAK: Thank you.</p> <p>10 I see that some places on Exhibit 41, 11 there are references to a written explanation.</p> <p>12 How often did you provide a written 13 explanation?</p> <p>14 THE WITNESS: Only on the occasions 15 that Catalyst asked me to do so. For example, 16 usually in preparation for communication to 17 the -- to external purposes.</p> <p>18 MR. ZILIAK: So Catalyst did 19 occasionally ask you for such explanations?</p> <p>20 THE WITNESS: Right, in the form of -- 21 one of the exhibits actually that we've reviewed 22 today, the communication to advisors, for 23 example, on what happened.</p> <p>24 MR. ZILIAK: Okay. And to be clear, 25 when Catalyst asks you for that -- such</p>	<p style="text-align: right;">Page 736</p> <p>1 THE WITNESS: Correct.</p> <p>2 MR. ZILIAK: And that committee 3 included such people as George Amhrein and Jerry 4 Szilagyi and other folks from Catalyst New York, 5 correct?</p> <p>6 THE WITNESS: Correct.</p> <p>7 MR. ZILIAK: They commonly received 8 copies of the Model Alpha report; is that 9 correct?</p> <p>10 THE WITNESS: That's correct.</p> <p>11 MR. ZILIAK: And when metrics in this 12 report were triggered, did you discuss with them 13 what to do next?</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. ZILIAK: So, in particular, if you 16 did not immediately reduce the option premium 17 below six percent, let's say, within the next 24 18 hours, they would have been aware of this as a 19 matter of course?</p> <p>20 THE WITNESS: Yes.</p> <p>21 MR. ZILIAK: And that -- that system 22 of taking these triggers to the risk committee 23 continued in place after December 2016; is that 24 correct?</p> <p>25 THE WITNESS: Yes.</p>
<p style="text-align: right;">Page 735</p> <p>1 explanations, you then did provide such 2 explanations in writing?</p> <p>3 THE WITNESS: Correct.</p> <p>4 MR. ZILIAK: Okay. Thank you. I may 5 come back to this.</p> <p>6 Anything else?</p> <p>7 Okay. At least as of December 2016, 8 there was then a risk committee impaneled; is 9 this correct?</p> <p>10 THE WITNESS: That's correct.</p> <p>11 MR. ZILIAK: And --</p> <p>12 MR. BENSON: I'm sorry. Which date 13 did you say?</p> <p>14 MR. ZILIAK: I said December of 2016; 15 is that correct?</p> <p>16 MR. BENSON: December -- December of 17 2016? Yes.</p> <p>18 MR. ZILIAK: Yes.</p> <p>19 MR. BENSON: I believe that that's 20 accurate. Sorry. I thought you said January 21 2016.</p> <p>22 MR. ZILIAK: Sorry.</p> <p>23 December 2016, there was, by then, 24 sometime -- at least by sometime in December, 25 there was an impaneled risk committee?</p>	<p style="text-align: right;">Page 737</p> <p>1 MR. ZILIAK: So January, February, 2 2017, the same system was in place?</p> <p>3 THE WITNESS: That's correct.</p> <p>4 MR. ZILIAK: So during February 2017 5 around the drawdown, that same risk committee, 6 including members of Catalyst New York, were 7 aware of your responses to these triggers when 8 they -- when they were sounded?</p> <p>9 THE WITNESS: That's right.</p> <p>10 MR. ZILIAK: Okay.</p> <p>11 MR. SCHMIDT: I'm sorry. Did you 12 explain what is the exact system in place that 13 provides this report to all members of the risk 14 committee?</p> <p>15 THE WITNESS: I believe they get an 16 e-mail copy.</p> <p>17 MR. SCHMIDT: They're not --</p> <p>18 MR. BENSON: Including -- including 19 Mr. Szilagyi or just Mr. Amhrein?</p> <p>20 THE WITNESS: I -- I'm fairly sure 21 that Mr. Amhrein gets one.</p> <p>22 MR. SCHMIDT: Okay. And I see his 23 name here.</p> <p>24 THE WITNESS: Right.</p> <p>25 MR. SCHMIDT: But the risk committee</p>

<p>1 is also Mr. Szilagyi. You said Mr. Miller, I 2 think, you said. 3 THE WITNESS: Yes. 4 MR. SCHMIDT: Anybody else in New York 5 besides Mr. Amhrein, Mr. Miller, Mr. Szilagyi on 6 the risk committee? 7 THE WITNESS: I believe Mr. 8 Schoonover. 9 MR. SCHMIDT: Mr. Schoonover? Anybody 10 else? 11 THE WITNESS: I can't think of anyone 12 else. I -- currently, there's additional, but 13 in this time frame there is not. 14 MR. SCHMIDT: Okay. And I just -- you 15 testified just right now that there's a system 16 in place to notify the risk committee of each 17 and every one of these daily reports, and I'm -- 18 I don't see anybody else's name other than Mr. 19 Amhrein. 20 So I'm asking what is the system in 21 place or that was in place that notified the 22 entire risk committee of these daily reports? 23 THE WITNESS: I -- I -- I believe that 24 the risk officer, or whatever Mr. Amhrein's 25 title was, took care of that.</p>	<p>Page 738</p> <p>1 MR. ZILIAK: I probably led you down a 2 primrose path there. 3 I don't think we need that much right 4 now. Let me just ask you two simpler statements 5 then. 6 George Amhrein, who was -- and I 7 believe he is -- a member of Catalyst New York, 8 did receive these Model Alpha reports on a daily 9 basis; is that correct? 10 THE WITNESS: That is correct. 11 MR. ZILIAK: And after one of these 12 risk metrics was triggered, there would be, 13 typically, at least from December 2016 onwards, 14 at least through February of 2017, a meeting of 15 the risk committee to discuss what to do next? 16 THE WITNESS: Yes. 17 MR. ZILIAK: And whether or not they 18 had in front of them the particular Model Alpha 19 report, they would then hear -- they would then 20 hear from you and help discuss what would be 21 done next, what was being done to respond to 22 this; is that correct? 23 THE WITNESS: That's correct. 24 MR. ZILIAK: And, again, Jerry 25 Szilagyi and others from Catalyst New York were</p>
<p>1 MR. SCHMIDT: And what's that belief 2 based on? 3 THE WITNESS: The fact that we had 4 discussions, not initiated by me, immediately 5 after a risk trigger was -- was done. 6 In other words, if we had -- at each 7 point that we went over a risk metric, the -- 8 the risk committee -- typically, a risk 9 committee meeting was called. 10 MR. SCHMIDT: Okay. So from that, you 11 deduce that there was a symptom in place that 12 wasn't headed by you or caused by you that 13 disseminated the risk reports to the other 14 members of the risk committee? 15 THE WITNESS: Yes. 16 MR. SCHMIDT: Okay. But your 17 testimony just was that they got it every day 18 regardless of whether something was triggered. 19 So what's your basis for believing that on all 20 days, regardless of whether risk parameter is 21 triggered or not, the entire risk committee gets 22 every one of these daily reports? 23 THE WITNESS: I thought they were on 24 e-mail distribution, but now I see that they are 25 now.</p>	<p>Page 739</p> <p>1 on that same risk committee? 2 THE WITNESS: That's correct. 3 MR. ZILIAK: Okay. Just from my 4 understanding, does Manamu Solutions, to your 5 knowledge, send other reports to other people at 6 Catalyst, or is it specifically just to hedged 7 futures and just to this team? 8 THE WITNESS: I believe that -- 9 THE REPORTER: Hold on one sec. Is it 10 just -- 11 MR. ZILIAK: Just the team listed on 12 Exhibit 41 from the SEC. 13 THE WITNESS: My -- my belief is that 14 hedged futures and hedged commodity funds are 15 the only ones that this company sends reports 16 to. 17 MR. ZILIAK: Okay. All right. At 18 this stage, I'd like to turn your attention 19 please to what has been marked as CFTC Exhibit 20 12. 21 So let's look please at February 10th 22 where we see a delta of negative 625 percent. 23 Am I reading that correctly? 24 THE WITNESS: Yes. 25 (Reporter clarification.)</p>

<p style="text-align: right;">Page 742</p> <p>1 MR. ZILIAK: Is that correct? 2 THE WITNESS: Correct. 3 MR. ZILIAK: To your understanding, 4 does that mean that, if on that day the S&P were 5 to rise by one percent, the fund's NAV would 6 fall by exactly 6.25 percent? 7 THE WITNESS: That's what it's meant 8 to approximate. 9 MR. ZILIAK: It's meant to 10 approximate. So what is it leaving out? 11 THE WITNESS: It's leaving out, most 12 importantly, adjustments that I would make 13 during the day. 14 MR. ZILIAK: Okay. I believe you 15 also, in response to Mr. Wasserman earlier, 16 talked about gamma and vega. 17 THE WITNESS: Yes. So there are 18 other -- and that's why delta only approximates, 19 and sometimes ineffectively, the fund's exposure 20 to price because it doesn't take into account 21 other Greeks. 22 MR. SCHMIDT: I'm sorry. I don't 23 remember any testimony about vega. Did you 24 testify about vega? 25 MR. ZILIAK: He definitely testified</p>	<p style="text-align: right;">Page 744</p> <p>1 if you were over the next day to buy 100 delta, 2 would you then expect the delta the next day to 3 be exactly negative 525 percent? 4 THE WITNESS: No. 5 MR. ZILIAK: And why is that? 6 THE WITNESS: That would be because 7 market movement in combination with gamma would 8 change the delta independent of what I did. 9 MR. ZILIAK: So taking that one step 10 further, could you, upon seeing a negative 625 11 percent delta over the course of the next day 12 buy delta net and yet still end up with a more 13 negative delta at the end of that day? 14 THE WITNESS: Yes. In -- in fact, 15 that's exactly what happened on the 10th of 16 February. 17 As I previously testified, the trades 18 on February 10th were, in fact, positive delta. 19 So let me -- 20 MR. MORAN: Before we leave this CFTC 21 No. 12, since you brought it up, and I think you 22 did define the term very early yesterday, so a 23 long time ago, but can you describe what is 24 vega? 25 THE WITNESS: Vega is the sensitivity</p>
<p style="text-align: right;">Page 743</p> <p>1 about gamma. He may not have testified about 2 vega. I may have misrepresented that. 3 MR. SCHMIDT: I -- I could have missed 4 it. 5 Did you testify about vega on this 6 chart? 7 THE WITNESS: I -- I don't recall 8 testifying on -- about vega, no. 9 MR. SCHMIDT: Okay. 10 MR. ZILIAK: You're right. I think he 11 mentioned vega yesterday in a different context, 12 and I can play it over in my mind. 13 MR. SCHMIDT: Okay. So your answer is 14 you testified about gamma? 15 THE WITNESS: Yes. 16 MR. SCHMIDT: And delta? 17 THE WITNESS: Yes. 18 MR. SCHMIDT: Okay. All right. Sorry 19 to interrupt. 20 MR. ZILIAK: No, no. Thank you for 21 correcting that. 22 MR. ZILIAK: Let me ask you a related 23 question. 24 Looking still at February 10th where 25 again the -- the delta was negative 625 percent,</p>	<p style="text-align: right;">Page 745</p> <p>1 of an options price to changes in volatility. 2 MR. MORAN: Understood. Okay. Great. 3 What does this number mean here mean, 4 let's say, under February 10th where it says, 5 "negative 1066 percent"?</p> <p>6 THE WITNESS: I don't know the units 7 of measure on this calculation. They have never 8 been explained to me on -- for the vega 9 calculation.</p> <p>10 MR. MORAN: Would it be consistent 11 with the delta calculation?</p> <p>12 THE WITNESS: I don't know. It's 13 never been explained to me.</p> <p>14 MR. BENSON: Did you ever -- did you 15 ever ask for an explanation?</p> <p>16 THE WITNESS: No.</p> <p>17 MR. BENSON: Why not?</p> <p>18 THE WITNESS: Because, as I testified 19 previously, these were -- these -- this was data 20 we were collecting. We're not managing to this 21 numbers.</p> <p>22 So, in particular, the focus from 23 members of the risk committee was about delta 24 and gamma. So those are the -- the numbers that 25 I focused on.</p>

<p style="text-align: right;">Page 746</p> <p>1 MR. MORAN: When we listened to that 2 little brief call from earlier today, I think 3 you -- I think your quote was that the most 4 important input, even more than the price of the 5 S&P, is the level of implied volatility. 6 THE WITNESS: Yes. That's correct. 7 MR. MORAN: How do you measure your 8 exposure to the level of implied volatility or 9 your sensitivity to changes in applied 10 volatility? 11 THE WITNESS: I do that with 12 OptionVue. 13 And -- and actually, I'm actually glad 14 you asked that question because another 15 characteristic of this time frame was a very 16 unusual relationship between price and 17 volatility. 18 The VIX, most common measure, was 19 actually up over 20 percent in those few days' 20 time, which, again, is very unusual behavior, 21 which is also why a negative volatility number 22 is actually typically positive in terms of 23 offsetting some of a negative delta calculation. 24 And just one other comment I'd like to 25 make is at the time, certainly, we weren't</p>	<p style="text-align: right;">Page 748</p> <p>1 you're not concerned about. You know? 2 THE WITNESS: Well, no. My point 3 is -- and as I've -- in describing the strategy, 4 I make emphasis on this -- is one of the 5 thing -- things that the strategy takes 6 advantage of is the inverse relationship between 7 price and volatility. 8 That means that I always want to be 9 short vega above the market and long vega or at 10 least neutral vega below the market. 11 So if I see a short vega number in my 12 call positions, I'm -- I'm absolutely not 13 concerned about it. 14 MR. MORAN: Okay. Here, let's ask it 15 a different way here. 16 The number you see as your vega 17 number, is it a percent similar to what we see 18 here on CFTC No. 12 or is it dollar vega? 19 THE WITNESS: I see a dollar vega. I 20 can change that, but most of the time, I have 21 set it to dollar. 22 MR. MORAN: Could you give me a range 23 what it normally is? 24 THE WITNESS: Honestly, it -- it all 25 depends on where the portfolio is.</p>
<p style="text-align: right;">Page 747</p> <p>1 aware -- I think we all are now -- of some 2 allegations of manipulation of the VIX contract. 3 So I can only say I scratched my head about 4 how -- how the VIX could rise so dramatically in 5 an equally dramatic rise in -- in price during a 6 short period of time. 7 I don't know the answer to that, but 8 it's just interesting to learn now that -- that 9 there is some allegation of manipulation of 10 that -- that index. 11 MR. MORAN: Okay. I would like to 12 revisit -- when you say you look at OptionVue, 13 does OptionVue calculate a number, a vega 14 number, for the portfolio? 15 THE WITNESS: Yes, it does. 16 MR. MORAN: What approximately was 17 your vega in that first week of February? 18 THE WITNESS: I don't recall. 19 MR. MORAN: Was it larger than normal? 20 THE WITNESS: I -- I don't know how to 21 characterize normal, and I don't recall the 22 exact number so there's no way I can answer 23 that. 24 MR. MORAN: You probably have an 25 average level that you always see and that</p>	<p style="text-align: right;">Page 749</p> <p>1 Right now, the vega in the portfolio 2 is pretty near zero. 3 MR. MORAN: Okay. How about in early 4 February? 5 THE WITNESS: It would have been very 6 negative. 7 MR. MORAN: Yeah, sitting right at all 8 the shorts, right? 9 THE WITNESS: Sure. 10 MR. MORAN: Okay. Thank you. 11 MR. SCHMIDT: All right. 12 Sorry. Are you on different exhibit 13 now? 14 MR. ZILIAK: I'm deciding whether to 15 go to another exhibit. 16 MR. SCHMIDT: Oh. Okay. I'm sorry. 17 I didn't know if I missed it. 18 MR. ZILIAK: No, you didn't miss 19 anything yet. 20 I was about to, but I am trying to 21 decide whether to continue where we were given 22 that. I'm sorry. 23 I believe earlier you -- just a few 24 minutes ago you said that buying delta net and 25 yet still seeing your delta become more negative</p>

<p style="text-align: right;">Page 750</p> <p>1 over the course of the day was exactly what you 2 experienced on around February 10th of 2017; is 3 that correct?</p> <p>4 THE WITNESS: Correct.</p> <p>5 MR. ZILIAK: And at that stage, I'd 6 like to refer you to CFTC Exhibit 7?</p> <p>7 THE WITNESS: I'll offer an additional 8 comment on -- on that question as well, since we 9 just discussed volatility.</p> <p>10 In addition to gamma -- and this goes 11 to the interaction of all of the Greeks on each 12 other and options pricing.</p> <p>13 In addition to gamma, an increase in 14 volatility on a short call position will also 15 increase or make the call options delta more 16 negative.</p> <p>17 So the dramatic increase in the VIX 18 during this period of time also had a negative 19 influence on delta independent of what I was 20 doing to counteract that.</p> <p>21 MR. ZILIAK: Thank you.</p> <p>22 Exhibit 7 of the CFTC, this -- this 23 was the -- a list of the trades you made on 24 February 10th, 2017; is that correct?</p> <p>25 THE WITNESS: That's correct.</p>	<p style="text-align: right;">Page 752</p> <p>1 and second page of this exhibit, that, in total, 2 you were short some tens of thousands of call 3 contracts.</p> <p>4 And I believe Mr. Wasserman 5 represented it was perhaps around 40,000; is 6 that correct?</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. ZILIAK: And he, in turn, stated 9 that, looking back at CFTC Exhibit 7 for a 10 second, you had purchased back on February 10th 11 about 4,000 of your short February calls; is 12 that correct?</p> <p>13 THE WITNESS: Correct.</p> <p>14 MR. ZILIAK: And he, in turn, stated 15 that that 4,000 or so short calls you had 16 purchased back would amount to perhaps ten 17 percent of your overall short call position from 18 February 10th as represented on Exhibit 4B; is 19 that correct?</p> <p>20 THE WITNESS: That's what I recall, 21 yes.</p> <p>22 MR. ZILIAK: Now, I took his 23 implementation -- his implication there to be 24 that, by purchasing back just ten percent of 25 your shorts, you hadn't done enough to reduce</p>
<p style="text-align: right;">Page 751</p> <p>1 MR. ZILIAK: And you stated earlier 2 that you believe this -- this set of trades in 3 isolation would be long delta?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. ZILIAK: So by making these 6 trades, all else equal -- all else equal, by 7 making these trades, did you increase or 8 decrease the magnitude of the negative delta 9 that your portfolio had at the time?</p> <p>10 THE WITNESS: Decrease.</p> <p>11 MR. ZILIAK: Okay. I believe also Mr. 12 Wasserman made the point that -- in fact, let 13 me, before I bring it up, let's go to another 14 exhibit please.</p> <p>15 Could I direct your attention to what 16 has been marked as Exhibit CFTC 4B please? Do 17 you have that?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MR. ZILIAK: Okay. Now, I have not 20 added it up myself, but I believe we discussed 21 that, looking just at the February 2017 22 expiration -- not the end of the month 23 expiration and not the March expiration, just 24 that first expiration -- and looking just at the 25 short call positions that appear on the first</p>	<p style="text-align: right;">Page 753</p> <p>1 your risk.</p> <p>2 I say this because he stated, as I 3 recall, that the short option positions -- 4 excuse me -- the short call positions here were 5 what would cause you loss as the S&P rallied. 6 Is that your recollection on what that is?</p> <p>7 THE WITNESS: That's correct.</p> <p>8 MR. ZILIAK: And --</p> <p>9 MR. SCHMIDT: To be fair, that's what 10 the witness testified to.</p> <p>11 MR. ZILIAK: I was just going to ask 12 that.</p> <p>13 MR. ZILIAK: And you, in turn -- you 14 also said that the short call positions were -- 15 were what would cause your portfolio, all else 16 equal, to lose value as the S&P rallied?</p> <p>17 THE WITNESS: Correct.</p> <p>18 MR. ZILIAK: Looking at the set of 19 trades you made on CFTC Exhibit 7, if you 20 left -- you left all of these exactly as they 21 were but, in addition, had bought back not just 22 ten percent of your short calls but all of your 23 short February calls here, all 40,000, not 24 4,000 --</p> <p>25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 754</p> <p>1 MR. ZILIAK: -- what do you think that 2 would have done to the delta in your portfolio? 3 THE WITNESS: It would have flipped 4 the delta to a much larger number long, which 5 would have created -- you know, in hindsight, 6 the market went up. But had it gone down, that 7 would have put an equal amount of risk in the 8 other direction of the portfolio. 9 MR. ZILIAK: Now, you are saying "an 10 equal amount of risk." Now, just to clarify, as 11 between two options, one making the exact trades 12 you made on February 10th, as evidenced by 13 Exhibit 7 of the CFTC, or, alternatively, making 14 those same trades, plus purchasing back all your 15 other short February calls, which one of those 16 do you think would have ended up -- would have 17 led to an overall portfolio delta that was 18 closer to zero? 19 THE WITNESS: What I did on February 20 10th. 21 MR. ZILIAK: Okay. 22 I think we are good over here. 23 BY MR. SCHMIDT: 24 Q Okay. Those weren't the only two 25 options open to you -- I'm sorry -- only two</p>	<p style="text-align: right;">Page 756</p> <p>1 came up once, did it? 2 A Well, I don't know how to talk about 3 it coming up. 4 Q Just yes or no. You never used those 5 words, did you? 6 A Oh, yes, I did. 7 Q Okay. So would you agree that the 8 statistical process control is important -- is 9 an important attribute of the manage- -- I'm 10 sorry. 11 Would you agree that the statistical 12 process control is an important part of the 13 futures fund management? 14 A It's a -- it's an important tool that 15 I use, yes. 16 Q Okay. So statistical process control 17 is an important tool that you use to manage the 18 futures fund, right? 19 A Correct. 20 Q Okay. Are you aware of any 21 disclosures to investors in the futures fund 22 that discuss the specific phrase "statistical 23 process control"?</p>
<p style="text-align: right;">Page 755</p> <p>1 possibilities open to you on February 10th, 2 correct? 3 A No. 4 Q Okay. Is there any other option that 5 was opened to you that could have got delta 6 closer to zero than just the A or B option that 7 Mr. Ziliak gave you? 8 A Had my goal been to get delta to zero, 9 yes. 10 Q Okay. I am just responding to his 11 question. 12 A Sure. 13 Q I just want to know. Okay. 14 MR. SCHMIDT: All right. 15 BY MR. BENSON: 16 Q I have a few follow-up questions based 17 on the testimony you just provided. 18 Statistical process control, SPC, is a 19 topic that you just testified about, right? 20 A Yes. 21 Q So up until now you've given, we'll 22 call it, more than 20 hours of testimony, right? 23 A Sure. 24 Q Okay. The phrase "statistical process 25 control" or even the acronym SPC, that never</p>	<p style="text-align: right;">Page 757</p> <p>1 policies and procedures governing the futures 2 fund that use the three words "statistical 3 process control"?</p> <p>4 A No. 5 Q Okay. Are you aware of ever giving or 6 receiving any training with regard to management 7 of the futures fund in which the words 8 "statistical process control" were used? 9 A No. 10 Q Okay. You participated in telephone 11 calls with investment advisors and 12 internal-external wholesalers at various times 13 from at least 2006 through -- 14 MR. SCHMIDT: 2016. 15 BY MR. BENSON: 16 Q Sorry. 2016 to the present regarding 17 the futures fund, correct? 18 A Yes. 19 Q Do you recall ever using the phrase 20 "statistical process control" on any of those 21 calls? 22 A I'm not certain. I can't say for sure 23 I did not. 24 Q Okay. And Exhibit 112, which Mr. 25 Ziliak provided you, that does not use the term</p>

<p>1 "statistical process control," correct?</p> <p>2 A It does not.</p> <p>3 Q Okay. There is reference on Page</p> <p>4 MFST00048398 of six sigma control charting,</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q Are you aware that, when you hired Ms.</p> <p>8 Rios, one of the skills that you wanted to --</p> <p>9 that you discussed with her was reading charts?</p> <p>10 A I don't recall that.</p> <p>11 QOkay. I believe you testified earlier</p> <p>12 that one of the benefits of OptionVue is that</p> <p>13 you're able to see charts that have various</p> <p>14 scenarios in one place, right?</p> <p>15 A Yes.</p> <p>16 QOkay. And based on your 30-plus years</p> <p>17 of experience in the investment field, are you</p> <p>18 familiar with the concept of charting so that</p> <p>19 you can see how a fund performs over time and</p> <p>20 under various scenarios?</p> <p>21 AI've -- I've only been an investment</p> <p>22 professional for roughly 10 years -- 12. Sorry.</p> <p>23 MR. SCHMIDT: I think yesterday,</p> <p>24 though, you said that you've been investing for</p> <p>25 30 years, right?</p>	<p>Page 758</p> <p>1 A Extreme changes in the VIX.</p> <p>2 QOkay.</p> <p>3 A Opposites to the direction you would</p> <p>4 normally expect.</p> <p>5 QAnd you would have seen that in your</p> <p>6 vega number that you got from OptionVue,</p> <p>7 although, you got that in a dollar value instead</p> <p>8 of a percentage, correct?</p> <p>9 AYes. More importantly, I would have</p> <p>10 seen it and -- and did see it on the times I</p> <p>11 looked in terms of the projection that OptionVue</p> <p>12 gave me for the portfolio value, which was</p> <p>13 the -- the impact of the price increase plus VIX</p> <p>14 increase, again, because it's so unusual, caused</p> <p>15 the portfolio to suffer more so than what</p> <p>16 OptionVue had indicated.</p> <p>17 QOh, I -- I'm sorry. I -- I thought</p> <p>18 Mr. Wasserman spent almost a half hour asking</p> <p>19 you if you -- in this exact time period, whether</p> <p>20 you looked at OptionVue to see what the impact</p> <p>21 would be on the portfolio as a whole if there</p> <p>22 were changes in the market, and your response, I</p> <p>23 think -- and we can always check the transcript.</p> <p>24 But it was repeatedly: I have no idea</p> <p>25 whether I looked at and I can't remember.</p>
<p>1 THE WITNESS: Sure, yeah. I think</p> <p>2 that is correct.</p> <p>3 BY MR. BENSON:</p> <p>4 Q Okay. I'm sorry. I didn't mean to</p> <p>5 say that you were an investment professional for</p> <p>6 years. You have been investing for 30 years.</p> <p>7 A Okay. Great.</p> <p>8 Q And in that 30 years of experience,</p> <p>9 have you become familiar with the concept of</p> <p>10 reading charts?</p> <p>11 A Yes.</p> <p>12 Q And that's -- that's a -- that's a</p> <p>13 phrase that's often used within the investment</p> <p>14 community.</p> <p>15 "Did you look at the charts on that</p> <p>16 stock? Did you look at the charts on that</p> <p>17 stock," correct?</p> <p>18 A Yes.</p> <p>19 MR. BENSON: Okay. All right. I</p> <p>20 don't think I have anything else.</p> <p>21 Do you?</p> <p>22 BY MR. SCHMIDT:</p> <p>23 Q Just one question.</p> <p>24 You said that, in early February,</p> <p>25 there were some extreme VIX numbers, correct?</p>	<p>Page 759</p> <p>1 So now are you telling me something</p> <p>2 different?</p> <p>3 A No. My testimony was -- and he asked</p> <p>4 me how often I looked at it in this time frame,</p> <p>5 and I said not every day, but I certainly looked</p> <p>6 at it on two or three occasions. That's what I</p> <p>7 recall my testimony to be.</p> <p>8 Q But he specifically asked you multiple</p> <p>9 times whether you looked at it to determine the</p> <p>10 effect on the portfolio.</p> <p>11 A Yes.</p> <p>12 Q Okay. Didn't you just tell me that,</p> <p>13 during this period of time, that looking at the</p> <p>14 vega number would not only tell you what's going</p> <p>15 on with the VIX, but it's also going to tell you</p> <p>16 or did tell you, in fact, what's happened --</p> <p>17 what would happen to the portfolio as a whole?</p> <p>18 Did I mishear what you just said?</p> <p>19 A I think what I said was that the --</p> <p>20 the OptionVue result would have understated the</p> <p>21 loss based on the rise in the VIX.</p> <p>22 Q Do you know that, or are you guessing?</p> <p>23 Do you remember looking at OptionVue</p> <p>24 and looking at the effect that was predicted for</p> <p>25 the portfolio in this period of time, meaning</p>

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<p>1 February 1 through February 10? Do you 2 remember?</p> <p>3 A Right. I did look at OptionVue during 4 this period of time, and I know from experience 5 with it that it takes into account the 6 volatility so that -- I don't recall 7 specifically.</p> <p>8 Again, I -- my focus, as I testified, 9 was on the expiration line, but I do know for a 10 fact that, if volatility goes the wrong way, 11 OptionVue will have that effect.</p> <p>12 Q I'm not asking -- that sounds to me 13 like you just have experience with OptionVue --</p> <p>14 A Yes.</p> <p>15 Q -- and if that condition exists, 16 that's what's going to happen?</p> <p>17 A Yes.</p> <p>18 Q Okay. I'm asking you if you remember 19 in this period of time, early February -- early 20 to mid-February 2017, looking at OptionVue and 21 seeing what the effect would be on the portfolio 22 of certain market moves based on what OptionVue 23 is telling you.</p> <p>24 Do you remember, or you don't 25 remember?</p>	<p>1 people -- do practitioners of SPC refer to 2 control charts or control charting?</p> <p>3 THE WITNESS: Yes.</p> <p>4 MR. ZILIAK: Okay. Would you call the 5 charts used for technical analysis control 6 charts or control charting?</p> <p>7 THE WITNESS: They are a different 8 kind of chart.</p> <p>9 MR. ZILIAK: Okay. So on that same 10 page Mr. Benson referenced in Exhibit 112 in the 11 FCC, where it says, "six sigma control 12 charting," to your understanding, would six 13 sigma control charting imply technical analysis?</p> <p>14 THE WITNESS: No.</p> <p>15 MR. ZILIAK: That's all I have.</p> <p>16 MR. MORAN: Nothing.</p> <p>17 MR. BENSON: Nothing.</p> <p>18 MR. SCHMIDT: We are off the record at 19 6:58 -- sorry -- before we are, Mr. Walczak, 20 thank you for coming in. We really appreciate 21 it and staying for two days and answering our 22 questions.</p> <p>23 THE WITNESS: Sure.</p> <p>24 MR. SCHMIDT: It has been a big help.</p> <p>25 All right?</p>
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<p>1 A No. I -- I testified already that I 2 did -- I did not -- I do not remember looking at 3 that whole portfolio because I was focused on 4 nearby options expirations.</p> <p>5 Q Okay. All right. I just want to make 6 sure you're not changing the testimony you gave 7 before.</p> <p>8 A No. No.</p> <p>9 Q It's the same. Okay.</p> <p>10 MR. SCHMIDT: Anything else?</p> <p>11 MR. ZILIAK: Could I ask just one 12 small question responding to -- to -- yes, just 13 the question there.</p> <p>14 Let's see. On the subject of 15 charting, you are familiar with technical 16 analysis --</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. ZILIAK: -- generally speaking?</p> <p>19 And in the trading -- in the trading 20 sense, technical analysis often involves charts?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. ZILIAK: You're also familiar with 23 SPC, correct?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. ZILIAK: Do people on the -- do</p>	<p>1 We are off the record at 6:58. 2 (Whereupon, at 6:58 p.m., the 3 examination was concluded.)</p> <p>4 * * * * *</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 PROOFREADER'S CERTIFICATE

2

3 In the Matter of: CATALYST HEDGED FUTURES

4 STRATEGY FUND

5 Witness: Edward S. Walczak

6 File Number: C-08400-A

7 Date: Wednesday, April 4, 2018

8 Location: Chicago, Illinois

9

10 This is to certify that I, Donna S. Raya,
11 (the undersigned), do hereby swear and affirm that
12 the attached proceedings before the U.S. Securities
13 and Exchange Commission were held according to the
14 record and that this is the original, complete, true
15 and accurate transcript that has been compared to the
16 reporting or recording accomplished at the hearing.

17

18 _____

19 (Proofreader's Name) (Date)

20

21

22

23

24

25

Transcript Word Index

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